

2011

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTY-SECOND LEGISLATURE
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**WASHINGTON SESSION LAWS
GENERAL INFORMATION**

1. EDITIONS AVAILABLE.

(a) *General Information.* The session laws are printed in a permanent softbound edition containing the accumulation of all laws adopted in the legislative session. The edition contains a subject index and tables indicating Revised Code of Washington sections affected.

(b) *Where and how obtained - price.* The permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The edition costs \$25.00 per set plus applicable state and local sales taxes and \$7.00 shipping and handling. All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER.

The session laws are presented 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 2011 regular session to be the first moment of July 22, 2011.

(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 2011 laws may be found at the back of the final volume.

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CHAPTER 150

[Engrossed Substitute House Bill 1183]

PRIMARY CARE PROVIDERS—INCREASE—CLINICAL ROTATION

AN ACT Relating to increasing the number of primary health care providers in Washington; adding new sections to chapter 28B.115 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 a severe shortage of primary health care providers exists in Washington, particularly in rural and underserved areas of the state. The legislature further finds that an over reliance on specialty health care at the expense of primary care results in a health care system that is less efficient. The legislature further finds that institutions of higher education must produce more primary care providers. The legislature further finds that the efficient use of clinical sites for rotations will expand the supply of primary care providers. The legislature further finds that expanding residency programs in community health centers will increase residents' exposure to primary care practice.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.115 RCW to read as follows:

Any osteopathic or allopathic medical school receiving state funds or authorized by the higher education coordinating board may not prohibit a hospital or physician from entering into an agreement to provide student clinical rotations to qualified osteopathic or allopathic medical students.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.115 RCW to read as follows:

A foreign osteopathic or allopathic medical school may not prohibit a hospital or physician from entering into an agreement to provide student clinical rotations to qualified osteopathic or allopathic medical students.

Passed by the House April 13, 2011.

Passed by the Senate March 31, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 151

[Substitute House Bill 1218]

REVISED CODE OF WASHINGTON—TECHNICAL CORRECTIONS

AN ACT Relating to making technical corrections to the Revised Code of Washington; amending RCW 13.32A.082, 18.51.070, and 35.21.217; reenacting and amending RCW 28B.67.020 and 46.61.350; reenacting RCW 39.94.040; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 13.32A.082 and 2010 c 229 s 2 are each amended to read as follows:

(1)((a) ~~Except as provided in (b) of this subsection,~~) Any person((; including unlicensed youth shelters or runaway and homeless youth programs;)) who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home

without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

~~((b)(i) If a licensed overnight youth shelter, or another licensed organization whose stated mission is to provide services to homeless or runaway youth and their families, provides shelter to a minor and knows at the time of providing the shelter that the minor is away from a lawfully prescribed residence or home without parental permission, it shall contact the youth's parent, preferably within twenty-four hours but within no more than seventy-two hours following the time that the youth is admitted to the shelter or other licensed organization's program. The notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization. If there are compelling reasons not to notify the parent, the shelter or organization shall instead notify the department.~~

~~(ii) At least once every eight hours after learning that a youth receiving services or shelter under this section is away from home without permission, the shelter or organization staff must consult the information that the Washington state patrol makes publicly available under RCW 43.43.510(2). If the youth is publicly listed as missing, the shelter or organization shall immediately notify the department of its contact with the youth listed as missing. The notification must include a description of the youth's physical and emotional condition and the circumstances surrounding the youth's contact with the shelter or organization.~~

~~(c) Reports required under this section))~~ The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

~~((c) "Compelling reasons" include, but are not limited to, circumstances that indicate that notifying the parent or legal guardian will subject the child to abuse or neglect as defined in chapter 26.44 RCW.))~~

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

~~((4) Nothing in this section prohibits any person from immediately reporting the identity and location of any minor who is away from a lawfully prescribed residence or home without parental permission more promptly than required under this section.~~

~~(5) This section expires July 1, 2012.))~~

NEW SECTION. Sec. 2. Section 1 of this act takes effect July 1, 2012.

Sec. 3. RCW 18.51.070 and 1979 ex.s. c 211 s 64 are each amended to read as follows:

The department, after consultation with ~~((the nursing home advisory council and))~~ the board of health, shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate medical and nursing care of individuals in nursing homes and the sanitary, hygienic, and safe conditions of the nursing home in the interest of public health, safety, and welfare.

Sec. 4. RCW 28B.67.020 and 2009 c 296 s 1 and 2006 c 112 s 3 are each reenacted and amended to read as follows:

(1) The Washington customized employment training program is hereby created to provide training assistance to employers locating or expanding in the state.

(2)(a) Application to receive funding under this program shall be made to the board in a form and manner as specified by the board. Successful applicants shall receive a training allowance from the board to cover the costs of training at a qualified training institution. Employers may not receive an allowance for training costs which exceed the maximum annual training cost per employee, as established by the board, and are not eligible to receive an allowance or allowances of over five hundred thousand dollars per calendar year.

(b) Allowances shall be granted for applicants who meet the following criteria:

(i) The employer must have entered into an agreement with a qualified training institution to engage in customized training and the employer must agree to: (A) Upon completion of the training, make a payment to the employment training finance account created in RCW 28B.67.030 in an amount equal to one-quarter of the amount of the training allowance; and (B) over the subsequent eighteen months, make monthly or quarterly payments, as specified in the agreement, to the employment training finance account created in RCW 28B.67.030 in an amount equal to three-quarters of the amount of the training allowance. During calendar years 2009 and 2010, participants may delay payments due under this section for up to eighteen months. The payments into the employment training finance account provided for in this section do not constitute payment to the institution.

(ii) When hiring, the employer must make good faith efforts, as determined by the board, to hire from trainees in the participant's training program. The agreement with the qualified training institution provided for in (b)(i) of this subsection shall specify terms for reimbursement or additional payment to the employment training finance account by the employer if the participant does not, when hiring, make good faith efforts to hire from trainees in the participant's training program.

(iii) The training allowance may not be used to train workers who have been hired as a result of a strike or lockout.

(c) Preference shall be given to employers with fewer than fifty employees.

(d) Preference shall be given to training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces.

(3) Qualified training institutions may enter into agreements with four-year institutions of higher education, as defined in RCW 28B.10.016, in accordance with the interlocal cooperation act, chapter 39.34 RCW.

(4) The board and qualified training institutions may solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, federal, or other governmental entities, as well as private sources, for the purpose of providing training allowances under chapter 112, Laws of 2006. All revenue thus solicited and received shall be deposited into the employment training finance account created in RCW 28B.67.030.

(5) Qualified training institutions must make good faith efforts to develop training programs using trainers preferred by participants.

(6) For employers who (a) have requested training under the job skills program created under chapter 28C.04 RCW but are not able to participate in the job skills program because the funds have all been committed, and (b) desire to become participants in the Washington customized employment training program, the board shall ensure a seamless process toward participation.

(7) The board may adopt rules to implement this section.

(8) This section expires July 1, 2012.

Sec. 5. RCW 35.21.217 and 2010 c 135 s 1 are each amended to read as follows:

(1) Prior to furnishing utility services, a city or town may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by RCW 35.21.290 or 35.67.200. A city or town may determine how to apply partial payments on past due accounts.

(2) A city or town may provide a real property owner or the owner's designee with duplicates of tenant utility service bills, or may notify an owner or the owner's designee that a tenant's utility account is delinquent. However, if an owner or the owner's designee notifies the city or town in writing that a property served by the city or town is a residential rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the city or town shall notify the owner or the owner's designee of a residential tenant's delinquency at the same time and in the same manner the city or town notifies the tenant of the tenant's delinquency or by mail, and the city or town is prohibited from collecting from the owner or the owner's designee any charges for electric light or power services more than four months past due. When a city or town provides a real property owner or the owner's designee with duplicates of residential tenant utility service bills or notice that a tenant's utility account is delinquent, the city or town shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee.

(3) After August 1, 2010, if a city or town fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by ~~((this))~~ subsection (2) of this section, the city or town shall have no lien against the premises for the residential tenant's delinquent and unpaid charges and is prohibited from collecting the tenant's delinquent and unpaid charges for electric light or power services from the owner or the owner's designee.

(4) When a utility account is in a tenant's name, the owner or the owner's designee shall notify the city or town in writing within fourteen days of the termination of the rental agreement and vacation of the premises. If the owner or the owner's designee fails to provide this notice, a city or town providing electric light or power services is not limited to collecting only up to four months of a

tenant's delinquent charges from the owner or the owner's designee, provided that the city or town has complied with the notification requirements of subsection ~~((3))~~ (2) of this section.

(5)(a) If an occupied multiple residential rental unit receives utility service through a single utility account, if the utility account's billing address is not the same as the service address of a residential rental property, or if the city or town has been notified that a tenant resides at the service address, the city or town shall make a good faith and reasonable effort to provide written notice to the service address of pending disconnection of electric power and light or water service for nonpayment at least seven calendar days prior to disconnection. The purpose of this notice is to provide any affected tenant an opportunity to resolve the delinquency with his or her landlord or to arrange for continued service. If requested, a city or town shall provide electric power and light or water services to an affected tenant on the same terms and conditions as other residential utility customers, without requiring that he or she pay delinquent amounts for services billed directly to the property owner or a previous tenant except as otherwise allowed by law and only where the city or town offers the opportunity for the affected tenant to set up a reasonable payment plan for the delinquent amounts legally due. If a landlord fails to pay for electric power and light or water services, any tenant who requests that the services be placed in his or her name may deduct from the rent due all reasonable charges paid by the tenant to the city or town for such services. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who deducts from his or her rent payments made to a city or town as provided in this subsection.

(b) Nothing in this subsection (5) affects the validity of any lien authorized by RCW 35.21.290 or 35.67.200. Furthermore, a city or town that provides electric power and light or water services to a residential tenant in these circumstances shall retain the right to collect from the property owner, previous tenant, or both, any delinquent amounts due for service previously provided to the service address if the city or town has complied with the notification requirements of subsection ~~((3))~~ (2) of this section when applicable.

Sec. 6. RCW 46.61.350 and 2010 c 15 s 1 and 2010 c 8 s 9069 are each reenacted and amended to read as follows:

(1)(a) The driver of any of the following vehicles must stop before the stop line, if present, and otherwise within fifty feet but not less than fifteen feet from the nearest rail at a railroad grade crossing unless exempt under subsection (3) of this section:

(i) A school bus or private carrier bus carrying any school child or other passenger;

(ii) A commercial motor vehicle transporting passengers;

(iii) A cargo tank, whether loaded or empty, used for transporting any hazardous material as defined in the hazardous materials regulations of the United States department of transportation in 49 C.F.R. Parts 107 through 180 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section. For the purposes of this section, a cargo tank is any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis;

(iv) A cargo tank, whether loaded or empty, transporting a commodity under exemption in accordance with ~~((United States department of transportation in))~~ 49 C.F.R. Part 107, Subpart B as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section;

(v) A cargo tank transporting a commodity that at the time of loading has a temperature above its flashpoint as determined by the United States department of transportation in 49 C.F.R. Sec. 173.120 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section; or

(vi) A commercial motor vehicle that is required to be marked or placarded with any one of the following classifications by the United States department of transportation in 49 C.F.R. Part 172 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section:

- (A) Division 1.1, Division 1.2, Division 1.3, or Division 1.4;
- (B) Division 2.1, Division 2.2, Division 2.2 oxygen, Division 2.3 poison gas, or Division 2.3 chlorine;
- (C) Division 4.1 or Division 4.3;
- (D) Division 5.1 or Division 5.2;
- (E) Division 6.1 poison;
- (F) Class 3 combustible liquid or Class 3 flammable;
- (G) Class 7;
- (H) Class 8.

(b) While stopped, the driver must listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train. The driver may not proceed until he or she can do so safely.

(2) After stopping at a railroad grade crossing and upon proceeding when it is safe to do so, the driver must cross only in a gear that permits the vehicle to traverse the crossing without changing gears. The driver may not shift gears while crossing the track or tracks.

(3) This section does not apply at any railroad grade crossing where:

- (a) Traffic is controlled by a police officer or flagger.
- (b) A functioning traffic control signal is transmitting a green light.
- (c) The tracks are used exclusively for a streetcar or industrial switching purposes.

(d) The utilities and transportation commission has approved the installation of an "exempt" sign in accordance with the procedures and standards under RCW 81.53.060.

(e) The crossing is abandoned and is marked with a sign indicating it is out-of-service.

(f) The state patrol has, by rule, identified a crossing where stopping is not required.

(g) The superintendent of public instruction has, by rule, identified a circumstance under which a school bus or private carrier bus carrying any school child or other passenger is not required to stop.

(4) For the purpose of this section, "commercial motor vehicle" means: Any vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, that transports passengers for hire; any private carrier bus;

any vehicle used to transport property that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 pounds) or more; and any vehicle used in the transportation of hazardous materials as defined in RCW 46.25.010.

Sec. 7. RCW 39.94.040 and 2010 1st sp.s. c 36 s 6015 and 2010 1st sp.s. c 35 s 406 are each reenacted to read as follows:

(1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature. For the purposes of this requirement, a financing contract must be treated as used for real property if it is being entered into by the state for the acquisition of land; the acquisition of an existing building; the construction of a new building; or a major remodeling, renovation, rehabilitation, or rebuilding of an existing building. Prior approval of the legislature is not required under this chapter for a financing contract entered into by the state under this chapter for energy conservation improvements to existing buildings where such improvements include: (a) Fixtures and equipment that are not part of a major remodeling, renovation, rehabilitation, or rebuilding of the building, or (b) other improvements to the building that are being performed for the primary purpose of energy conservation. Such energy conservation improvements must be determined eligible for financing under this chapter by the office of financial management in accordance with financing guidelines established by the state

treasurer, and are to be treated as personal property for the purposes of this chapter.

(5) The state may not enter into any financing contract on behalf of another agency without the approval of such a financing contract by the governing body of the other agency.

Passed by the House February 28, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 152

[House Bill 1225]

PORT DISTRICT COMMISSIONERS—COMPENSATION CALCULATION

AN ACT Relating to clarification of the method of calculating public port district commissioner compensation; and amending RCW 53.12.260.

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

Sec. 1. RCW 53.12.260 and 2007 c 469 s 3 are each amended to read as follows:

(1) Each commissioner of a port district shall receive ninety dollars, as adjusted for inflation by the office of financial management in subsection (4) of this section, per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other official services or duties on behalf of the district. The total per diem compensation of a port commissioner shall not exceed eight thousand six hundred forty dollars in a year, as adjusted for inflation by the office of financial management in subsection (4) of this section, or ten thousand eight hundred dollars in any year, as adjusted for inflation by the office of financial management in subsection (4) of this section, 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, as adjusted for inflation by the office of financial management in subsection (4) of this section; 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, as adjusted for inflation by the office of financial management in subsection (4) of this section.

(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)~~) (37): 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.

The dollar thresholds for salaries and per diem compensation established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions.

Passed by the House February 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 153

[House Bill 1306]

COMMERCIAL DRIVER'S LICENSE—EXEMPTION—AGRIBUSINESS PURPOSES

AN ACT Relating to removing the expiration date for exempting applicants who operate commercial motor vehicles for agribusiness purposes from certain commercial driver's license requirements; amending RCW 46.25.060; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 46.25.060 and 2009 c 339 s 1 are each amended to read as follows:

(1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state, has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely, and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the

department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

- (i) The test is the same which would otherwise be administered by the state;
- (ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and
- (iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(c) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

- (i) Public benefit not-for-profit corporations that are federally supported head start programs; or
- (ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(~~(4)~~) (2).

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3)(a) The department may waive the skills test and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(b) An applicant who operates a commercial motor vehicle for agribusiness purposes is exempt from the course of instruction completion and employer skills and training certification requirements under this section. By January 1, 2010, the department shall submit recommendations regarding the continuance of this exemption to the transportation committees of the legislature. For purposes of this subsection (3)(b), "agribusiness" means a private carrier who in the normal course of business primarily transports:

- (i) Farm machinery, farm equipment, implements of husbandry, farm supplies, and materials used in farming;
- (ii) Agricultural inputs, such as seed, feed, fertilizer, and crop protection products;

(iii) Unprocessed agricultural commodities, as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(iv) Any combination of (b)(i) through (iii) of this subsection.

~~((This subsection (3)(b) expires July 1, 2011.))~~ The department shall notify the transportation committees of the legislature if the federal government takes action affecting the exemption provided in this subsection (3)(b).

(4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(5)(a) The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer.

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 July 1, 2011.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 154

[House Bill 1413]

INVASIVE SPECIES COUNCIL

AN ACT Relating to the expiration date of the invasive species council and account; amending RCW 79A.25.310 and 79A.25.370; creating a new section; repealing 2007 c 241 s 75 (uncodified); repealing 2006 c 152 s 10 (uncodified); and providing an expiration date.

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

NEW SECTION. Sec. 1. The land, water, and other resources of Washington state are being severely impacted by the invasion of an increasing number of harmful invasive plant and animal species. These impacts are resulting in damage to the state's environment and causing economic hardships. The multitude of public and private organizations with an interest and authority in controlling and preventing the spread of harmful invasive species in Washington state need a mechanism for cooperation, communication, collaboration, and implementation of the statewide plan of action to combat these threats.

Sec. 2. RCW 79A.25.310 and 2007 c 241 s 61 are each amended to read as follows:

(1) There is created the Washington invasive species council to exist until ~~((December 31, 2014))~~ June 30, 2017. Staff support to the council shall be provided by the recreation and conservation office and from the agencies represented on the council. For administrative purposes, the council shall be located within the office.

(2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.

(3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.

(4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms.

Sec. 3. RCW 79A.25.370 and 2007 c 241 s 62 are each amended to read as follows:

(1) The invasive species council account is created in the custody of the state treasurer. All receipts from appropriations, gifts, grants, and donations must be deposited into the account. Expenditures from the account may be used only to carry out the purposes of the council. The account is subject to allotment procedures under chapter 43.88 RCW and the approval of the director of the recreation and conservation office is required for expenditures. All expenditures must be directed by the council.

(2) This section expires June 30, 2017.

NEW SECTION. Sec. 4. The following acts or parts of acts are repealed:

- (1) 2007 c 241 s 75 (uncodified); and
- (2) 2006 c 152 s 10 (uncodified).

Passed by the House February 28, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 155

[House Bill 1425]

HEALTH SCIENCES AND SERVICES AUTHORITIES

AN ACT Relating to health sciences and services authorities; and amending RCW 35.104.040.

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

Sec. 1. RCW 35.104.040 and 2010 1st sp.s. c 33 s 2 are each amended to read as follows:

(1) The higher education coordinating board may approve applications submitted by local governments for an area's designation as a health sciences and services authority under this chapter. The director must determine the division to review applications submitted by local governments under this chapter. The application for designation must be in the form and manner and contain such information as the higher education coordinating board may prescribe, provided the application:

(a) Contains sufficient information to enable the director to determine the viability of the proposal;

(b) Demonstrates that an ordinance or resolution has been passed by the legislative authority of a local government that delineates the boundaries of an area that may be designated an authority;

(c) Is submitted on behalf of the local government, or, if that office does not exist, by the legislative body of the local government;

(d) Demonstrates that the public funds directed to programs or facilities in the authority will leverage private sector resources and contributions to activities to be performed;

(e) Provides a plan or plans for the development of the authority as an entity to advance as a cluster for health sciences education, health sciences research, biotechnology development, biotechnology product commercialization, and/or health care services; and

(f) Demonstrates that the state has previously provided funds to health sciences and services programs or facilities in the applicant city, town, or county.

(2) The director must determine the division to develop criteria to evaluate the application. The criteria must include:

(a) The presence of infrastructure capable of spurring development of the area as a center of health sciences and services;

(b) The presence of higher education facilities where undergraduate or graduate coursework or research is conducted; and

(c) The presence of facilities in which health services are provided.

(3) There may be no more than two authorities statewide.

(4) An authority may only be created in a county with a population of less than one million persons and located east of the crest of the Cascade mountains.

(5) The director may reject or approve an application. When denying an application, the director must specify the application's deficiencies. The decision regarding such designation as it relates to a specific local government is final; however, a rejected application may be resubmitted.

(6) Applications are due by December 31, 2010, and must be processed within sixty days of submission.

(7) The director may, at his or her discretion, amend the boundaries of an authority upon the request of the local government.

(8) The higher education coordinating board may adopt any rules necessary to implement this chapter.

(9) The ~~((higher education coordinating board must develop evaluation and performance measures in order to evaluate the effectiveness of the programs in the authorities that are funded with public resources. A report to the legislature is due on a biennial basis beginning December 1, 2009. In addition, the))~~ higher education coordinating board must develop evaluation criteria that enables the local governments to measure the effectiveness of the program.

Passed by the House February 25, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 156

[House Bill 1479]

STATUTE LAW COMMITTEE—PUBLICATIONS

AN ACT Relating to the publications of the statute law committee; amending RCW 1.08.070, 34.05.210, 40.04.031, and 44.20.050; adding a new section to chapter 1.08 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The purpose of this act is to promote widespread access to legal and public information materials produced by the statute law committee in both digital and print formats while responding to a changing marketplace where sale of paper copies no longer supports the printing of copies intended for free distribution.

The legislature finds that web-based access to these materials has become the most popular and efficient method of access by the public, state agencies and local governments, and the legal community and that permanent public access to these web-based materials shall be maintained and preserved. The statute law committee shall also make it a priority to provide reasonably priced print alternatives to the public, state agencies and local governments, and libraries.

The legislature intends that the statute law committee have additional discretion to distribute its publications using the most efficient methods and technologies available and to use less expensive formats for the delivery of free copies to state and local agencies when appropriate.

Sec. 2. RCW 1.08.070 and 1955 c 235 s 9 are each amended to read as follows:

Each member of the legislature ~~((, who has not received a set of the Revised Code of Washington under the provisions of section 9, chapter 155, Laws of 1951, or section 16, chapter 257, Laws of 1953, or this section, shall be entitled to))~~ may receive one set of the Revised Code of Washington on digital media without charge. All persons receiving codes under ~~((the provisions of))~~ this section ~~((or the sections above referred to shall be entitled to))~~ may receive supplements to the code on digital media free of charge, during their term of office as a member or officer of the legislature ~~((: PROVIDED, That legislative appropriation has been made for the purpose of supplying such codes and supplements))~~.

NEW SECTION. Sec. 3. A new section is added to chapter 1.08 RCW to read as follows:

Current digital copies of the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, and the session laws of the Washington state legislature shall be maintained and made freely available for permanent public access on the code reviser or legislative web site. All historical digital copies added to the web site shall be made freely available for permanent public access.

The statute law committee shall provide digital authentication for any publication in a digital format that is declared official, if in the discretion of the committee such authentication does not interfere with public access.

Sec. 4. RCW 34.05.210 and 2007 c 456 s 3 are each amended to read as follows:

(1)(a) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(b) The statute law committee, in its discretion, may publish the official copy of the Washington Administrative Code in a digital format on the code reviser or legislative web site.

(c) The code reviser shall provide a paper copy of the entire Washington Administrative Code or any section or sections of the code upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy.

(d) The code reviser shall provide a limited number of free paper copies of the Washington Administrative Code to libraries or institutions on request for access and archival purposes.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Compilations and registers shall be made available for purchase, in ~~((written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) county boards of law library trustees and to the Olympia press corps library, and (d) other persons))~~ print or tangible, digital format, at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations when required for use and inspection as provided in chapter 27.24 RCW. If the register or compilation is published ~~((exclusively by electronic means))~~ in digital format on the code reviser or legislative web site, providing on-site access to the ~~((electronic))~~ digital version of the register shall satisfy the requirements of this subsection for access to the register.

~~(9) ((Registers shall be made available in written form to the same parties and under the same terms as those listed in subsection (7) of this section, unless the register is published exclusively by electronic means on the code reviser web site.~~

~~(10))~~ Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section.

Sec. 5. RCW 40.04.031 and 2007 c 456 s 1 are each amended to read as follows:

The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

~~(1) ((One set shall be given to the following: The United States supreme court library; each state adult correctional institution; each state mental institution; the state historical society; the state bar association; the Olympia press corps library; the University of Washington library; the library of each of the regional universities; The Evergreen State College library; the Washington State University library; each county law library; and the municipal reference branch of the Seattle public library.~~

~~(2) One set shall be given to the following upon their request: Each member of the legislature; each state agency and its divisions; each state commission, committee, board, and council; each community college; each assistant attorney general; each member of the United States senate and house of representatives from this state; each state official whose office is created by the Constitution; each prosecuting attorney; and each public library in cities of the first class.~~

~~(3) Two sets shall be given to the following: The administrator for the courts; the library of congress; the law libraries of any accredited law schools established in this state; and the governor.~~

~~(4) Two sets shall be given to the following upon their request: Each United States district court in the state; and each office and branch office of the United States district attorneys in this state.~~

~~(5) Three sets shall be given to the library of the circuit court of appeals of the ninth circuit, upon its request.~~

~~(6) The following may request, and receive at no charge, as many sets as are needed for their official business: The senate and house of representatives; each county auditor, who shall receive and distribute sets for use by his or her~~

~~county's officials; the office of the code reviser; the secretary of the senate; the chief clerk of the house of representatives; the supreme court; each court of appeals in the state; the superior courts; the state library; and the state law library.~~

~~(7))~~ The statute law committee, in its discretion, may provide for provision of free copies in digital or print format of the session laws to selected federal, state, and local agencies. Special consideration shall be given to correctional institutions where internet access is not allowed and to public libraries and other public agencies where internet access is limited or not available.

~~(2)~~ Surplus ~~((copies))~~ paper sets of the session laws shall be sold and delivered by the statute law committee, in which case the price of the ~~((bound volumes))~~ paper sets shall be sufficient to cover costs.

All money received from ~~((the))~~ sale of the session laws ~~((sets))~~ shall be paid into the statute law committee publications account.

~~((8))~~ (3) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper.

(4)(a) The statute law committee, in its discretion, may publish the official copy of the session laws in a digital format on the code reviser or legislative web site.

(b) The code reviser shall provide a paper copy of any individual session law or the compiled session laws of any session upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy.

Sec. 6. RCW 44.20.050 and 2006 c 46 s 2 are each amended to read as follows:

When all of the acts of any session of the legislature and initiative measures enacted by the people since the next preceding session have been certified to the statute law committee, the code reviser employed by the statute law committee shall make the proper headings and index of such acts or laws and, after such work has been completed, the statute law committee shall have published ~~((and bound))~~ on the code reviser or legislative web site within seventy-five days after final adjournment of the legislature for that year and publish as many ~~((copies))~~ paper sets as deemed necessary by the committee of such acts and laws, with such headings and indexes, and such other matter as may be deemed essential, including a title page showing the session at which such acts were passed, the date of convening and adjournment of the session, and any other matter deemed proper, including a certificate by the secretary of state of such referendum measures as may have been enacted by the people since the next preceding session.

Passed by the House April 13, 2011.

Passed by the Senate March 28, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 157

[Substitute House Bill 1493]

HEALTH PROFESSIONS DISCIPLINARY PROCESS—TRANSPARENCY

AN ACT Relating to providing greater transparency to the health professions disciplinary process; and adding a new section to chapter 18.130 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.130 RCW to read as follows:

(1) A disciplining authority shall provide a person or entity making a complaint or report under RCW 18.130.080 with a reasonable opportunity to supplement or amend the contents of the complaint or report. The license holder must be provided an opportunity to respond to any supplemental or amended complaint or report. The disciplining authority shall promptly respond to inquiries made by the license holder or the person or entity making a complaint or report regarding the status of the complaint or report.

(2)(a) Pursuant to chapter 42.56 RCW, following completion of an investigation or closure of a report or complaint, the disciplining authority shall, upon request, provide the license holder or the person or entity making the complaint or report with a copy of the file relating to the complaint or report, including, but not limited to, any response submitted by the license holder under RCW 18.130.095(1).

(b) The disciplining authority may not disclose documents in the file that:

(i) Contain confidential or privileged information regarding a patient other than the person making the complaint or report; or

(ii) Contain information exempt from public inspection and copying under chapter 42.56 RCW.

(c) The exemptions in (b) of this subsection are inapplicable to the extent that the relevant information can be deleted from the documents in question.

(d) The disciplining authority may impose a reasonable charge for copying the file consistent with the charges allowed for copying public records under RCW 42.56.120.

(3)(a) Prior to any final decision on any disciplinary proceeding before a disciplining authority, the disciplining authority shall provide the person submitting the complaint or report or his or her representative, if any, an opportunity to be heard through an oral or written impact statement about the effect of the person's injury on the person and his or her family and on a recommended sanction.

(b) If the license holder is not present at the disciplinary proceeding, the disciplining authority shall transmit the impact statement to the license holder, who shall certify to the disciplining authority that he or she has received it.

(c) For purposes of this subsection, representatives of the person submitting the complaint or report include his or her family members and such other affected parties as may be designated by the disciplining authority upon request.

(4) A disciplining authority shall inform, in writing, the license holder and person or entity submitting the complaint or report of the final disposition of the complaint or report.

(5)(a) If the disciplining authority closes a complaint or report prior to issuing a statement of charges under RCW 18.130.090 or a statement of

allegations under RCW 18.130.172, the person or entity submitting the report may, within thirty days of receiving notice under subsection (4) of this section, request the disciplining authority to reconsider the closure of the complaint or report on the basis of new information relating to the original complaint or report. A request for reconsideration made under this subsection may only be brought in relation to the original complaint and may only be brought one time.

(b) The disciplining authority shall, within thirty days of receiving the request for reconsideration, notify the license holder of the request and the new information providing the basis therefor. The license holder has thirty days to provide a response. The disciplining authority shall notify the person or entity and the license holder in writing of its final decision on the request for reconsideration, including an explanation of the reasoning behind the decision.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 158

[Substitute House Bill 1502]

MOBILE/MANUFACTURED HOMES—RELOCATION ASSISTANCE— INSTALLATION—REGULATION

AN ACT Relating to manufactured housing and mobile homes; amending RCW 59.22.010, 59.22.050, 43.22A.100, 46.17.150, 59.20.300, 59.22.020, 59.21.050, 35.63.161, 35A.63.146, and 36.70.493; reenacting and amending RCW 43.15.020; creating a new section; and repealing RCW 59.22.070 and 59.22.090.

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

Sec. 1. RCW 59.22.010 and 1995 c 399 s 154 are each amended to read as follows:

(1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department subject to the availability of amounts appropriated for this specific purpose.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from

both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.

Sec. 2. RCW 59.22.050 and 2008 c 116 s 6 are each amended to read as follows:

~~((1))~~ In order to provide general assistance to ~~((manufactured/mobile home))~~ resident organizations, qualified tenant organizations, ~~((manufactured/mobile home community or park owners, and landlords))~~ and tenants, the department shall establish an office of ~~((manufactured housing))~~ mobile/manufactured home relocation assistance. This office ~~((will))~~ shall:

(1) Subject to the availability of amounts appropriated for this specific purpose, provide, either directly or through contracted services, technical assistance to qualified tenant organizations as defined in RCW 59.20.030 and resident organizations or persons in the process of forming a resident organization pursuant to this chapter ~~((59.22 RCW))~~. The office will keep records of its activities in this area.

(2) ~~((The office shall))~~ Administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance.

Sec. 3. RCW 43.22A.100 and 1994 c 284 s 23 are each amended to read as follows:

The manufactured home installation training account is created in the state treasury. All receipts collected under this chapter and RCW 46.17.150 and any legislative appropriations for manufactured home installation training shall be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used for the purposes of this chapter. Unexpended and unencumbered moneys that remain in the account at the end of the fiscal year do not revert to the state general fund but remain in the account, separately accounted for, as a contingency reserve.

Sec. 4. RCW 46.17.150 and 2010 c 161 s 510 are each amended to read as follows:

Before accepting an application for a transfer of certificate of title for a new or used manufactured home as required in this title and chapter 65.20 RCW, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a fifteen dollar fee in addition to any other fees and taxes required by law. The fifteen dollar fee must be forwarded to the state treasurer, who shall deposit the fee in the manufactured ~~((housing))~~ home installation training account created in RCW ~~((59.22.070))~~ 43.22A.100.

Sec. 5. RCW 59.20.300 and 2008 c 116 s 4 are each amended to read as follows:

(1) A landlord must provide a written notice of sale of a manufactured/mobile home community by certified mail or personal delivery to:

- (a) Each tenant of the manufactured/mobile home community;
- (b) The officers of any known qualified tenant organization;
- (c) The office of ~~((manufactured housing))~~ mobile/manufactured home relocation assistance;

(d) The local government within whose jurisdiction all or part of the manufactured/mobile home community exists;

(e) The housing authority within whose jurisdiction all or part of the manufactured/mobile home community exists; and

(f) The Washington state housing finance commission.

(2) A notice of sale must include:

(a) A statement that the landlord intends to sell the manufactured/mobile home community; and

(b) The contact information of the landlord or landlord's agent who is responsible for communicating with the qualified tenant organization or eligible organization regarding the sale of the property.

Sec. 6. RCW 59.22.020 and 2010 c 161 s 1150 are each amended to read as follows:

The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

~~(1) ("Account" means the manufactured housing account created under RCW 59.22.070.~~

~~(2))~~ (2)) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

~~((3))~~ (2) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

~~((4))~~ (3) "Department" means the department of commerce.

~~((5))~~ "Fee" means the mobile home title transfer fee imposed under RCW 46.17.150.

~~(6))~~ (4) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

~~((7))~~ (5) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

~~((8))~~ (6) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

~~((9))~~ (7) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

~~((10))~~ (8) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

~~((11))~~ (9) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

~~((12))~~ (10) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

~~((13))~~ (11) "Mobile home" shall have the same meaning as it does in RCW ~~(46.04.302)~~ 43.22.335.

~~((14))~~ (12) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

~~((15))~~ (13) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(10), or a manufactured home park subdivision as defined by RCW 59.20.030(12) created by the conversion to resident ownership of a mobile home park.

~~((16))~~ (14) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

~~((17))~~ (15) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

~~((18))~~ (16) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot.

Sec. 7. RCW 59.21.050 and 2010 c 161 s 1149 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 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 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 or removed their homes from the park: (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.

(3) The department may deduct a percentage amount of the fee collected under RCW 46.17.155(~~(, not to exceed five percent of the fees received,)~~) for administration expenses incurred by the department.

NEW SECTION. Sec. 8. Any residual balance of funds remaining in the manufactured housing account must be transferred to the manufactured home installation training account created in RCW 43.22A.100. The treasurer shall make the transfer after being notified by the office of financial management that it has completed the financial statement for fiscal year 2011, and no later than December 31, 2011.

Sec. 9. RCW 35.63.161 and 2004 c 210 s 1 are each amended to read as follows:

(1) After June 10, 2004, a city may designate a new manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A city may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use.

Sec. 10. RCW 35A.63.146 and 2004 c 210 s 2 are each amended to read as follows:

(1) After June 10, 2004, a code city may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A code city may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use.

Sec. 11. RCW 36.70.493 and 2004 c 210 s 3 are each amended to read as follows:

(1) After June 10, 2004, a county may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A county may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use.

Sec. 12. RCW 43.15.020 and 2010 1st sp.s. c 7 s 136 and 2010 c 271 s 704 are each reenacted and amended to read as follows:

The lieutenant governor serves as president of the senate and is responsible for making appointments to, and serving on, the committees and boards as set forth in this section.

- (1) The lieutenant governor serves on the following boards and committees:
 - (a) Capitol furnishings preservation committee, RCW 27.48.040;
 - (b) Washington higher education facilities authority, RCW 28B.07.030;
 - (c) Productivity board, also known as the employee involvement and recognition board, RCW 41.60.015;
 - (d) State finance committee, RCW 43.33.010;
 - (e) State capitol committee, RCW 43.34.010;
 - (f) Washington health care facilities authority, RCW 70.37.030;
 - (g) State medal of merit nominating committee, RCW 1.40.020;
 - (h) Medal of valor committee, RCW 1.60.020; and
 - (i) Association of Washington generals, RCW 43.15.030.
- (2) The lieutenant governor, and when serving as president of the senate, appoints members to the following boards and committees:
 - (a) Civil legal aid oversight committee, RCW 2.53.010;
 - (b) Office of public defense advisory committee, RCW 2.70.030;
 - (c) Washington state gambling commission, RCW 9.46.040;
 - (d) Sentencing guidelines commission, RCW 9.94A.860;
 - (e) State building code council, RCW 19.27.070;
 - (f) Financial education public-private partnership, RCW 28A.300.450;
 - (g) Joint administrative rules review committee, RCW 34.05.610;
 - (h) Capital projects advisory review board, RCW 39.10.220;
 - (i) Select committee on pension policy, RCW 41.04.276;
 - (j) Legislative ethics board, RCW 42.52.310;
 - (k) Washington citizens' commission on salaries, RCW 43.03.305;
 - (l) Legislative oral history committee, RCW 44.04.325;
 - (m) State council on aging, RCW 43.20A.685;
 - (n) State investment board, RCW 43.33A.020;
 - (o) Capitol campus design advisory committee, RCW 43.34.080;
 - (p) Washington state arts commission, RCW 43.46.015;
 - (q) Information services board, RCW 43.105.032;
 - (r) Council for children and families, RCW 43.121.020;
 - (s) PNWER-Net working subgroup under chapter 43.147 RCW;
 - (t) Community economic revitalization board, RCW 43.160.030;
 - (u) Washington economic development finance authority, RCW 43.163.020;
 - (v) Life sciences discovery fund authority, RCW 43.350.020;
 - (w) Legislative children's oversight committee, RCW 44.04.220;
 - (x) Joint legislative audit and review committee, RCW 44.28.010;
 - (y) Joint committee on energy supply and energy conservation, RCW 44.39.015;
 - (z) Legislative evaluation and accountability program committee, RCW 44.48.010;
 - (aa) Agency council on coordinated transportation, RCW 47.06B.020;
 - (bb) ~~((Manufactured housing task force, RCW 59.22.090;~~
 - ~~((ee))~~ Washington horse racing commission, RCW 67.16.014;
 - ~~((dd))~~ (cc) Correctional industries board of directors, RCW 72.09.080;

~~((ee))~~ (dd) Joint committee on veterans' and military affairs, RCW 73.04.150;

~~((ff))~~ (ee) Joint legislative committee on water supply during drought, RCW 90.86.020;

~~((gg))~~ (ff) Statute law committee, RCW 1.08.001; and

~~((hh))~~ (gg) Joint legislative oversight committee on trade policy, RCW 44.55.020.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

(1) RCW 59.22.070 (Manufactured housing account) and 2007 c 432 s 10, 1995 c 399 s 156, 1989 c 201 s 8, & 1988 c 280 s 5; and

(2) RCW 59.22.090 (Manufactured housing task force—Duties—Membership) and 1998 c 245 s 105 & 1991 c 327 s 4.

Passed by the House April 13, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 159

[Engrossed House Bill 1517]

INSURANCE COVERAGE—SELF-ADMINISTERED ANTICANCER MEDICATION

AN ACT Relating to requiring comparable coverage for patients who require orally administered anticancer medication; adding a new section to chapter 41.05 RCW; adding a new section to chapter 48.20 RCW; 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; and creating new sections.

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

NEW SECTION. Sec. 1. The Washington state legislature finds that for cancer patients, there is an inequity in how much they have to pay toward the cost of a self-administered oral medication and how much they have to pay for an intravenous product that is administered in a physician's office or clinic. The legislature further finds that when these inequities exist, patients' access to medically necessary, appropriate treatment is often unfairly restricted. The legislature also acknowledges that self-administered chemotherapy is the only treatment for some types of cancer where there is no intravenous alternative. The legislature declares that in order to reduce the out-of-pocket costs for cancer patients whose diagnosis requires treatment through self-administered anticancer medication, the cost-sharing responsibilities for these patients must be on a basis at least comparable to those of patients receiving intravenously administered anticancer medication.

NEW SECTION. Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

(1) Each health plan offered to public employees and their covered dependents under this chapter, including those subject to the provision of Title 48 RCW, and is issued or renewed beginning January 1, 2012, and provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer

chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 3. A new section is added to chapter 48.20 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 4. A new section is added to chapter 48.21 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 5. A new section is added to chapter 48.44 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 6. A new section is added to chapter 48.46 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer

chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 7. Each health plan offering individual or small group products that provides coverage for prescribed, self-administered anticancer medication as required under this act must report to the health committees of the legislature by November 1, 2013, with a summary of their cost experience.

Passed by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 160

[Substitute House Bill 1697]

FOSTER CARE—UNANNOUNCED VISITS

AN ACT Relating to unannounced monthly visits to persons providing care to children in the dependency system; reenacting and amending RCW 74.13.031; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe.

Sec. 2. RCW 74.13.031 and 2009 c 520 s 51, 2009 c 491 s 7, and 2009 c 235 s 2 are each reenacted and amended to read as follows:

(1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster

home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children.

(9) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) The department and supervising agencies shall have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(11)(a) ~~The department shall,~~ within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:

(i) Enrolled and participating in a postsecondary or vocational educational program;

(ii) Participating in a program or activity designed to promote or remove barriers to employment;

(iii) Engaged in employment for eighty hours or more per month; or

(iv) Incapable of engaging on any of the activities described in (a)(i) through (iii) of this subsection due to a medical condition that is supported by regularly updated information.

(b) A youth who remains eligible for placement services or benefits pursuant to department rules may continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday.

(12) ~~The department,~~ within amounts appropriated for this specific purpose, ~~(have)~~ has authority to provide adoption support benefits, or subsidized relative guardianship benefits on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a subsidized relative guardianship at age sixteen or older and who are engaged in one of the activities described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) ~~The department shall, within current funding levels, place on ((the)) its public web site ((maintained by the department))~~ a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 161

[Substitute House Bill 1861]

STATE-OWNED RAILROAD PROPERTY—SALE OR LEASE

AN ACT Relating to the sale or lease of surplus state-owned railroad properties; amending RCW 47.76.280 and 47.76.290; adding a new section to chapter 46.68 RCW; and declaring an emergency.

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

Sec. 1. RCW 47.76.280 and 1995 c 380 s 8 are each amended to read as follows:

(1) The department may sell or lease property acquired under this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity that originally donated funds to the department under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

(2) If no county rail district, county, port district, or other public or private entity authorized to operate rail service purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.290. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.300 or 47.76.320.

(3) Property acquired by the department under this chapter that is not essential for the operation of the rail service contemplated in subsections (1) and (2) of this section may be sold or leased at any time following acquisition in the manner provided in RCW 47.76.290.

Sec. 2. RCW 47.76.290 and 1993 c 224 s 8 are each amended to read as follows:

(1) If real property acquired by the department under this chapter that is essential for the operation of the rail service contemplated in RCW 47.76.280 is not sold or leased to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell or lease the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) The former owner, heir, or successor of the property from whom the property was acquired; or
- (e) Any abutting private owner or owners.

(2)(a) Real property acquired by the department under this chapter that is not essential for the operation of the rail service contemplated in RCW 47.76.280 may be leased or sold at fair market value, at any time following acquisition, to any entity or person in the following priority order:

(i) The current tenant or lessee of the real property or real property abutting the property being sold;

(ii) An abutting private owner, but only after each other abutting private owner, if any, as shown in the records of the county assessor, is notified in

writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the real property within fifteen days after receiving notice of the proposed sale, the real property must be sold at public auction in the manner provided in RCW 47.76.320 (2) through (4):

(iii) Any other state agency;

(iv) The city or county in which the real property is situated;

(v) Any other municipal corporation; or

(vi) The former owner, heir, or successor of the real property from whom the real property was acquired.

(b) If the department intends to sell or lease property under this subsection to an entity or person that is not the entity or person with the highest priority status under this subsection, the department must give written notice to each entity or person with higher priority status under this subsection that is reasonably considered to have an interest in the property. The entity with the highest priority status, willing to enter into a sale or lease at fair market value, must be given right of first refusal to buy or lease the property.

(3) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

~~((4))~~ (4) Sales to purchasers under this section may, at the department's option, be for cash or by real estate contract, except that any such property of the Palouse River and Coulee City rail lines that was purchased with bond proceeds in November 2004 may be sold only for cash at fair market value.

~~((4))~~ (5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

~~((5))~~ (6) All moneys received under this section shall be deposited in the essential rail ~~((banking account of the general fund))~~ assistance account created in RCW 47.76.250. Any moneys deposited under this subsection from sales or leases of property that are related, in any way, to the Palouse River and Coulee City rail lines must be used and, in the case of moneys received from sales, expended within two years of receipt, only for the refurbishment or improvement of the Palouse River and Coulee City rail lines.

NEW SECTION. Sec. 3. A new section is added to chapter 46.68 RCW to read as follows:

All revenue received by the department of transportation from operating leases or other business operations on the Palouse River and Coulee City rail lines must be deposited in the essential rail assistance account created in RCW 47.76.250 and used only for the refurbishment or improvement of the Palouse River and Coulee City rail lines.

****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.***

*Sec. 4 was vetoed. See message at end of chapter.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 22, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 22, 2011.

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

"I am returning, without my approval as to Section 4, Substitute House Bill 1861 entitled:

"AN ACT Relating to the sale or lease of surplus state-owned railroad properties."

The Department of Transportation does not intend to surplus property within the next 90 days. With that understanding, the emergency clause is unnecessary.

For this reason, I have vetoed Section 4 of Substitute House Bill 1861.

With the exception of Section 4, Substitute House Bill 1861 is approved."

CHAPTER 162

[Engrossed Substitute House Bill 1864]

DEBT COLLECTION

AN ACT Relating to debt collection; amending RCW 6.15.010, 6.15.020, 48.18.430, 6.27.140, and 6.27.140; reenacting and amending RCW 19.16.250; and providing an effective date.

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

Sec. 1. RCW 19.16.250 and 2001 c 217 s 5 and 2001 c 47 s 2 are each reenacted and amended to read as follows:

No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall ~~((make a reasonable effort to obtain the name of such person and))~~ provide this name to the debtor or cease efforts to collect on the debt until this information is provided;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor; and

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor;

(d) If the notice, letter, message, or form is the first notice to the debtor, an itemization of the claim asserted must be made including the following information:

(i) The original account number or redacted original account number assigned to the debt, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided; and

(ii) The date of the last payment to the creditor on the subject debt by the debtor, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: PROVIDED, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee

shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive

language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (18) of this section, and, in the case of suit, attorney's fees and taxable court costs.

(20) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted

written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

(21) Submit an affidavit or other request pursuant to chapter 6.32 RCW asking a superior or district court to transfer a bond posted by a debtor subject to a money judgment to the licensee, when the debtor has appeared as required.

Sec. 2. RCW 6.15.010 and 2005 c 272 s 6 are each amended to read as follows:

(1) Except as provided in RCW 6.15.050, the following personal property ~~((shall be))~~ is exempt from execution, attachment, and garnishment:

~~((1))~~ (a) All wearing apparel of every individual and family, but not to exceed ~~((one))~~ three thousand five hundred dollars in value in furs, jewelry, and personal ornaments for any individual.

~~((2))~~ (b) All private libraries including electronic media, which includes audio-visual, entertainment, or reference media in digital or analogue format, of every individual, but not to exceed ~~((fifteen hundred))~~ three thousand five hundred dollars in value, and all family pictures and keepsakes.

~~((3))~~ (c) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

~~((a))~~ (i) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed ~~((two))~~ six thousand ~~((seven))~~ five hundred dollars in value for the individual or ~~((five))~~ thirteen thousand ~~((four hundred))~~ dollars for the community, no single item to exceed seven hundred fifty dollars, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

~~((b))~~ (ii) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed ~~((two))~~ three thousand dollars in value, of which not more than ~~((two hundred))~~ one thousand five hundred dollars in value may consist of cash, and of which not more than ~~((two hundred dollars in value may consist of))~~;

(A) Until January 1, 2018:

(I) For debts owed to state agencies, two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under (c)(ii)(A) of this subsection may not exceed two hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities.

(II) For all other debts, five hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under (c)(ii)(B) of this subsection may not exceed five hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities.

(B) After January 1, 2018: For all debts, five hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under this subsection (1)(c)(ii)(B) may not exceed five hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities;

~~((c))~~ (iii) For an individual, a motor vehicle used for personal transportation, not to exceed ~~((two))~~ three thousand ~~((five))~~ two hundred fifty dollars or for a community two motor vehicles used for personal transportation, not to exceed ~~((five))~~ six thousand five hundred dollars in aggregate value;

~~((d))~~ (iv) Any past due, current, or future child support paid or owed to the debtor, which can be traced;

~~((e))~~ (v) All professionally prescribed health aids for the debtor or a dependent of the debtor; and

~~((f))~~ (vi) To any individual, the right to or proceeds of a payment not to exceed ~~((sixteen))~~ twenty thousand ~~((one hundred fifty))~~ dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or the right to or proceeds of a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. The exemption under this subsection ~~((3)(f))~~ (1)(c)(vi) does not apply to the right of the state of Washington, or any agent or assignee of the state, as a lienholder or subrogee under RCW 43.20B.060.

~~((4))~~ (d) To each qualified individual, one of the following exemptions:

~~((a))~~ (i) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed ~~((five))~~ ten thousand dollars in value;

~~((b))~~ (ii) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed ~~((five))~~ ten thousand dollars in value;

~~((c))~~ (iii) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed ~~((five))~~ ten thousand dollars in value.

(e) Tuition units, under chapter 28B.95 RCW, purchased more than two years prior to the date of a bankruptcy filing or court judgment, and contributions to any other qualified tuition program under 26 U.S.C. Sec. 529 of the internal revenue code of 1986, as amended, and to a Coverdell education savings account, also known as an education individual retirement account, under 26 U.S.C. Sec. 530 of the internal revenue code of 1986, as amended, contributed more than two years prior to the date of a bankruptcy filing or court judgment.

(2) For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

~~((5) Tuition units, under chapter 28B.95 RCW, purchased more than two years prior to the date of a bankruptcy filing or court judgment.)~~

Sec. 3. RCW 6.15.020 and 2007 c 492 s 1 are each amended to read as follows:

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in ~~((sections))~~ 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection ~~((shall))~~ does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in ~~((sections))~~ 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; ~~((or an education individual retirement account described in section 530 of such code;))~~ or a retirement bond described in section 409 of such code as in effect before January 1, 1984. ~~((The term "employee benefit plan" also means any rights accruing on account of money paid currently or in advance for purchase of tuition units under the advanced college tuition payment program in chapter 28B.95 RCW.))~~ The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in ~~((sections))~~ 26

U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) ~~Unless ((contrary to applicable)) prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an ((individual retirement account)) employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's ((individual retirement account)) employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial ((dispute resolution)) binding agreement or ((other)) order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an ((individual retirement account)) employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an ((individual retirement account)) employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an ((individual retirement account)) employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name ((the)) an individual retirement account is maintained. ((The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the internal revenue code of 1986, as amended, a Roth individual retirement account as described in section 408A of the internal revenue code of 1986, as amended, and an individual retirement bond as described in section 409 of the internal revenue code as in effect before January 1, 1984.)) As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.~~

Sec. 4. RCW 48.18.430 and 2005 c 223 s 10 are each amended to read as follows:

(1) The benefits, rights, privileges, and options under any annuity contract that are due the annuitant who paid the consideration for the annuity contract are not subject to execution and the annuitant may not be compelled to exercise those rights, powers, or options, and creditors are not allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on an annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to making the payments to the annuitant out of which the creditor seeks to recover. The notice must specify the amount claimed or the facts that will enable the insurer to determine the amount, and must set forth the facts that will enable the insurer to determine the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the basis of fraud.

(b) The total exemption of benefits presently due and payable to an annuitant periodically or at stated times under all annuity contracts may not at any time exceed ~~((two))~~ three thousand ~~((five hundred))~~ dollars per month for the length of time represented by the installments, and a periodic payment in excess of ~~((two))~~ three thousand ~~((five hundred))~~ dollars per month is subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to an annuitant under all annuity contracts at any time exceeds payment at the rate of ~~((two))~~ three thousand ~~((five hundred))~~ dollars per month, then the court may order the annuitant to pay to a judgment creditor or apply on the judgment, in installments, the portion of the excess benefits that the court determines to be just and proper, after due regard for the reasonable requirements of the judgment debtor and the judgment debtor's dependent family, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges, or options accruing under an annuity contract to a beneficiary or assignee are not transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained in this section for the annuitant apply to the beneficiary or assignee.

(3) An annuity contract within the meaning of this section is any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms.

Sec. 5. RCW 6.27.140 and 2010 1st sp.s. c 26 s 2 are each amended to read as follows:

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

NOTICE OF GARNISHMENT
AND OF YOUR RIGHTS

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse, state registered domestic partner, or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts certain property of your choice (including ~~((specified cash or))~~ money in a bank account up to \$200.00 for debts owed to state agencies, or up to \$500.00 for all other debts) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

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

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

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

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

.....
Name of Court

..... No
Plaintiff,

vs.

..... EXEMPTION CLAIM
Defendant,

.....
Garnishee Defendant

INSTRUCTIONS:

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

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

IF BANK ACCOUNT IS GARNISHED:

[] The account contains payments from:

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

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

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

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- I claim maximum exemption.
- I am supporting another child or other children.
- I am supporting a husband, wife, or state registered domestic partner.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

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

OTHER PROPERTY:

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

..... Print: Your name If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
..... Your signature Signature of husband, wife, or state registered domestic partner
..... Address Address (if different from yours)
..... Telephone number Telephone number (if different from yours)

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

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

Sec. 6. RCW 6.27.140 and 2011 c ... s 5 (section 5 of this act) are each amended to read as follows:

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

NOTICE OF GARNISHMENT
AND OF YOUR RIGHTS

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse, state registered domestic partner, or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts certain property of your choice (including ~~((money))~~ up to \$500.00 in a bank account (~~(up to \$200.00 for debts owed to state agencies, or up to \$500.00 for all other debts))~~) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the

law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

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

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

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

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

INSTRUCTIONS:

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

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

IF BANK ACCOUNT IS GARNISHED:

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

[] Other. Explain

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

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

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- [] I claim maximum exemption.
[] I am supporting another child or other children.
[] I am supporting a husband, wife, or state registered domestic partner.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

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

OTHER PROPERTY:

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

Print: Your name If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
Your signature Signature of husband, wife, or state registered domestic partner
Address Address (if different from yours)
Telephone number Telephone number (if different from yours)

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

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU

DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

NEW SECTION. Sec. 7. Section 6 of this act takes effect January 1, 2018.

Passed by the House April 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 163

[Engrossed Substitute House Bill 1902]

BUSINESS AND OCCUPATION TAX—DEDUCTION—CHILD WELFARE SERVICES

AN ACT Relating to a business and occupation tax deduction for amounts received with respect to child welfare services; adding a new section to chapter 82.04 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 82.04 RCW to read as follows:

(1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing child welfare services under a government-funded program.

(2) A person may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) The following definitions apply to this section:

(a) "Child welfare services" has the same meaning as provided in RCW 74.13.020; and

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431.

NEW SECTION. Sec. 2. This act applies to amounts received by a taxpayer on or after August 1, 2011.

Passed by the House April 14, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 22, 2011.

Filed in Office of Secretary of State April 22, 2011.

CHAPTER 164

[Substitute House Bill 1145]

CRIMES—MAIL THEFT

AN ACT Relating to mail theft; amending RCW 9A.56.010; adding new sections to chapter 9A.56 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. It is important to the citizens of this state to have confidence in the security of the mail. Mail contains personal information, medical records, and financial documents. Theft of mail has become a serious problem in our state because mail is a key source of information for identity

thieves. Currently, there is no law that adequately addresses the seriousness of this crime. This act is intended to accurately recognize the seriousness of taking personal, medical, or financial identifying information and compromising the integrity of our mail system.

Sec. 2. RCW 9A.56.010 and 2006 c 277 s 4 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "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;

(2) "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;

(3) "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;

(4) "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;

(5) "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;

(6) "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;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or

corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mail box, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mail boxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mail box, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of this act, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third class mail by the United States postal service;

(8) "Mail box," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before 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;

~~((8))~~ (10) "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;

~~((9))~~ (11) "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;

~~((10))~~ (12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

~~((11))~~ (13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

~~((12))~~ (14) "Received by the intended addressee" means that the addressee, owner of the delivery mail box, or authorized agent has removed the delivered mail from its delivery mail box;

(15) "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;

~~((13))~~ (16) "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;

~~((14))~~ (17) "Stolen" means obtained by theft, robbery, or extortion;

~~((15))~~ (18) "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;

~~((16))~~ (19) "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;

~~((17))~~ (20) "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;

~~((18))~~ (21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) 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) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), 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 criminal episode or 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.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(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. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(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;

~~((19))~~ (22) "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 the use is unauthorized by the partnership agreement.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a class C felony.

NEW SECTION. Sec. 4. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mail boxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mail boxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a class C felony.

NEW SECTION. Sec. 5. A new section is added to chapter 9A.56 RCW to read as follows:

Every person who, in the commission of mail theft or possession of stolen mail, shall commit any other crime, may be punished therefor as well as for the mail theft or possession of stolen mail, and may be prosecuted for each crime separately.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 165

[House Bill 1182]

CRIMES—WITNESS INTIMIDATION AND TAMPERING—SEPARATE OFFENSES

AN ACT Relating to the unit of prosecution for tampering with or intimidating a witness; amending RCW 9A.72.110 and 9A.72.120; and creating a new section.

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

NEW SECTION. Sec. 1. In response to *State v. Hall*, 168 Wn.2d 726 (2010), the legislature intends to clarify that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness.

Sec. 2. RCW 9A.72.110 and 1997 c 29 s 1 are each amended to read as follows:

(1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;
- (b) Induce that person to elude legal process summoning him or her to testify;
- (c) Induce that person to absent himself or herself from such proceedings; or
- (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

- (a) "Threat" means:
 - (i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (ii) Threat as defined in RCW 9A.04.110(~~((25))~~) (27).
- (b) "Current or prospective witness" means:
 - (i) A person endorsed as a witness in an official proceeding;
 - (ii) A person whom the actor believes may be called as a witness in any official proceeding; or

(iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.

(c) "Former witness" means:

(i) A person who testified in an official proceeding;

(ii) A person who was endorsed as a witness in an official proceeding;

(iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or

(iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.

(4) Intimidating a witness is a class B felony.

(5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense.

Sec. 3. RCW 9A.72.120 and 1994 c 271 s 205 are each amended to read as follows:

(1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself or herself from such proceedings; or

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

(2) Tampering with a witness is a class C felony.

(3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense.

Passed by the House February 14, 2011.

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CHAPTER 166

[Substitute House Bill 1188]

CRIMES—ASSAULT BY SUFFOCATION—DOMESTIC VIOLENCE

AN ACT Relating to crimes against persons involving suffocation or domestic violence; amending RCW 9A.36.021, 9A.04.110, and 9.94A.525; and prescribing penalties.

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

Sec. 1. RCW 9A.36.021 and 2007 c 79 s 2 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

Sec. 2. RCW 9A.04.110 and 2007 c 79 s 3 are each amended to read as follows:

In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in ~~((willful))~~ willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a ~~((willful))~~ willful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

~~((28))~~ (29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

~~((29))~~ (30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

Sec. 3. RCW 9.94A.525 and 2010 c 274 s 403 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.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) 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.

(c) Except as provided in (e) of this subsection, 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.

(d) Except as provided in (e) of this subsection, 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.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement 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.

(g) 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.589(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.589(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. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) 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), (12), or (13) 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 a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, 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 count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for

each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent 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.

(14) If the present conviction is for 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.

(15) 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.

(16) 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.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW 9A.44.130(~~((+))~~) or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW 9A.44.130(~~((+))~~) or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through

(18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense; ~~(and)~~

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

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CHAPTER 167

[Engrossed Second Substitute Senate Bill 5000]

DRIVING UNDER THE INFLUENCE—VEHICLE IMPOUNDMENT

AN ACT Relating to mandating a twelve-hour impound hold on motor vehicles used by persons arrested for driving under the influence of alcohol or drugs or being in physical control of a

vehicle while under the influence of alcohol or drugs; amending RCW 46.55.113; reenacting and amending RCW 46.55.113; adding new sections to chapter 46.55 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. This act shall be known and cited as Hailey's Law.

NEW SECTION. Sec. 2. (1) The legislature finds that:

(a) Despite every effort, the problem of driving or controlling a vehicle while under the influence of alcohol or drugs remains a great threat to the lives and safety of citizens. Over five hundred people are killed by traffic accidents in Washington each year and impaired vehicle drivers account for almost forty-five percent, or over two hundred deaths per year. That is, impairment is the leading cause of traffic deaths in this state;

(b) Over thirty-nine thousand people are arrested each year in Washington for driving or controlling a vehicle while under the influence of alcohol or drugs. Persons arrested for driving or controlling a vehicle while under the influence of alcohol or drugs may still be impaired after they are cited and released and could return to drive or control a vehicle. If the vehicle was impounded, there is nothing to stop the impaired person from going to the tow truck operator's storage facility and redeeming the vehicle while still impaired;

(c) More can be done to deter those arrested for driving or controlling a vehicle while under the influence of alcohol or drugs. Approximately one-third of those arrested for operating a vehicle under the influence are repeat offenders. Vehicle impoundment effectively increases deterrence and prevents an impaired driver from accessing the vehicle for a specified time. In addition, vehicle impoundment provides an appropriate measure of accountability for registered owners who allow impaired drivers to drive or control their vehicles, but it also allows the registered owners to redeem their vehicles once impounded. Any inconvenience on a registered owner is outweighed by the need to protect the public;

(d) In order to protect public safety and to enforce the state's laws, it is reasonable and necessary to mandatorily impound the vehicle operated by a person who has been arrested for driving or controlling a vehicle while under the influence of alcohol or drugs.

(2) The legislature intends by this act:

(a) To change the primary reason for impounding the vehicle operated by a person arrested for driving or controlling a vehicle under the influence of alcohol or drugs. The purpose of impoundment under this act is to protect the public from a person operating a vehicle while still impaired, rather than to prevent a potential traffic obstruction; and

(b) To require that officers have no discretion as to whether or not to order an impound after they have arrested a vehicle driver with reasonable grounds to believe the driver of the vehicle was driving while under the influence of alcohol or drugs, or was in physical control of a vehicle while under the influence of alcohol or drugs.

NEW SECTION. Sec. 3. (1)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle

under subsection (3)(c) of this section, the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under this chapter.

(b) If the police officer directing that a vehicle be impounded under this section has:

(i) Waited thirty minutes after the police officer contacted the police dispatcher requesting a registered tow truck operator and the tow truck responding has not arrived, or

(ii) If the police officer is presented with exigent circumstances such as being called to another incident or due to limited available resources being required to return to patrol,

the police officer may place the completed impound order and inventory inside the vehicle and secure the vehicle by closing the windows and locking the doors before leaving.

(c) If a police officer directing that a vehicle be impounded under this section has secured the vehicle and left it pursuant to (b) of this subsection, the police officer and the government or agency employing the police officer shall not be liable for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time that the registered tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the registered tow truck operator arrives.

(2)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners of the vehicle or there is a legal owner of the vehicle that is not the driver of the vehicle. A registered owner who is not the driver of the vehicle or a legal owner who is not the driver of the vehicle may redeem the impounded vehicle after it arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners or there is a legal owner who is not the driver of the vehicle. The police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by either a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(3)(a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the

registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(c) If the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest.

(d) The registered tow truck operator shall notify the agency that ordered that the vehicle be impounded when the vehicle arrives at the registered tow truck operator's storage facility and has been entered into the master log starting the twelve-hour period.

(4) A registered tow truck operator that releases an impounded vehicle pursuant to the requirements stated in this section is not liable for injuries or damages sustained by the operator of the vehicle or sustained by third parties that may result from the vehicle driver's intoxicated state.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

NEW SECTION. Sec. 4. If an impoundment arising from an alleged violation of RCW 46.61.502 or 46.61.504 is determined to be in violation of this chapter, then the police officer directing the impoundment and the government employing the officer are not liable for damages for loss of use of the vehicle if the officer had reasonable suspicion to believe that the driver of the vehicle was driving while under the influence of intoxicating liquor or any drug, or was in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

Sec. 5. RCW 46.55.113 and 2007 c 242 s 1 and 2007 c 86 s 1 are each amended to read as follows:

(1) Whenever the driver of a vehicle is arrested for a violation of RCW (~~46.61.502, 46.61.504,~~) 46.20.342(~~(:)~~) or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) 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;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) 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;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities 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;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) 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.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to

market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

Sec. 6. RCW 46.55.113 and 2010 c 161 s 1120 are each amended to read as follows:

(1) Whenever the driver of a vehicle is arrested for a violation of RCW ~~((46.61.502, 46.61.504,))~~ 46.20.342~~((,))~~ or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) 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;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) 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;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.19.010 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;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under

subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) 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.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

NEW SECTION. Sec. 7. Sections 2 through 4 of this act are each added to chapter 46.55 RCW.

NEW SECTION. Sec. 8. Section 6 of this act takes effect July 1, 2011.

NEW SECTION. Sec. 9. Section 5 of this act expires July 1, 2011.

Passed by the Senate April 14, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 168

[Senate Bill 5035]

MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT—RECEIPTS

AN ACT Relating to the manufactured/mobile home landlord-tenant act; and adding a new section to chapter 59.20 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 59.20 RCW to read as follows:

(1) A landlord shall provide a written receipt for any payment made by a tenant in the form of cash.

(2) A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant in a form other than cash.

Passed by the Senate April 14, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 169

[Substitute Senate Bill 5036]

DERELICT VESSEL AND INVASIVE SPECIES REMOVAL FEE

AN ACT Relating to the derelict vessel and invasive species removal fee; and amending RCW 88.02.640, 43.21A.667, 43.43.400, and 77.12.879.

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

Sec. 1. RCW 88.02.640 and 2010 c 161 s 1028 are each amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsections (3) and (4) of this section	Subsection (3) of this section
(c) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(d) Filing	RCW 46.17.005	RCW 46.17.005	RCW 46.68.440
(e) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW 46.68.400
(f) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220
(g) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (6) of this section
(h) Registration	\$10.50	RCW 88.02.560(2)	General fund
(i) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(j) Title application	\$5.00	RCW 88.02.515	General fund
(k) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(l) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	General fund

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) ~~((Until June 30, 2012,))~~ The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the ~~((freshwater))~~ aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) ~~((On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100.))~~ If the department of natural resources indicates that the balance of the derelict vessel removal account, not including

any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollars of the derelict vessel and invasive species removal fee that is deposited into the derelict vessel removal account as authorized in (a)(iv) of this subsection must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

Sec. 2. RCW 43.21A.667 and 2009 c 564 s 933 are each amended to read as follows:

(1) The ~~((freshwater))~~ aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the ~~((freshwater))~~ aquatic algae control account may be appropriated to the department to develop a freshwater and saltwater aquatic algae control program and may be used to establish contingency funds for emergent issues. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies: (i) To manage excessive freshwater and saltwater nuisance algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and ~~((during the 2009-2011 fiscal biennium to provide grants))~~ (ii) for ~~((sea lettuce research))~~ freshwater and saltwater nuisance algae monitoring and removal ~~((to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce))~~; and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

(4) For the purposes of this section, "saltwater nuisance algae" means native invasive algae (sea lettuce), nonnative invasive algae, and algae producing harmful toxins.

Sec. 3. RCW 43.43.400 and 2007 c 350 s 1 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under RCW 77.08.010 ~~((49) through (54))~~ (28), (40), (44), (58), and (59), aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(b) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(2) The aquatic invasive species enforcement account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(3) Funds in the aquatic invasive species enforcement account may be appropriated to the Washington state patrol and the department of fish and wildlife to develop an aquatic invasive species enforcement program for recreational and commercial watercraft, which includes equipment used to transport the watercraft and auxiliary equipment such as attached or detached outboard motors. Funds must be expended as follows:

(a) By the Washington state patrol, to inspect recreational and commercial watercraft that are required to stop at port of entry weigh stations managed by the Washington state patrol. The watercraft must be inspected for the presence of aquatic invasive species; and

(b) By the department of fish and wildlife to:

(i) Establish random check stations, to inspect recreational and commercial watercraft as provided for in RCW 77.12.879(3);

(ii) Inspect or delegate inspection of recreational and commercial watercraft. If the department conducts the inspection, there will be no cost to the person requesting the inspection;

(iii) Provide training to all department employees that are deployed in the field to inspect recreational and commercial watercraft; and

(iv) Provide an inspection receipt verifying that the watercraft is not contaminated after the watercraft has been inspected at a check station or has been inspected at the request of the owner of the recreational or commercial watercraft. The inspection receipt is valid until the watercraft is used again.

(4) The Washington state patrol and the department of fish and wildlife shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better

fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

Sec. 4. RCW 77.12.879 and 2009 c 333 s 22 are each amended to read as follows:

(1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW (~~(88.02.050)~~) 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

(a) To inspect recreational and commercial watercraft;

(b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;

(c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. A person who enters Washington by road transporting any commercial or recreational watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department must have in his or her possession valid documentation that the watercraft has been inspected and found free of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign

country as defined by rule of the department, or that is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005.

Passed by the Senate April 14, 2011.

Passed by the House April 7, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 170

[Substitute Senate Bill 5042]

VULNERABLE ADULTS—PROTECTION

AN ACT Relating to protection of vulnerable adults; amending RCW 74.34.020 and 74.34.067; adding a new section to chapter 74.34 RCW; and repealing RCW 74.34.021.

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

Sec. 1. RCW 74.34.020 and 2010 c 133 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) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the

restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary,

and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Vulnerable adult" includes a person:

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

(b) Found incapacitated under chapter 11.88 RCW; or

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

or

(d) Admitted to any facility; or

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

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

Sec. 2. RCW 74.34.067 and 2007 c 312 s 2 are each amended to read as follows:

(1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, financial exploitation, neglect, or self-neglect, (~~(abandonment, or financial exploitation,)~~) and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

(8) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

~~((8))~~ (9) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants.

NEW SECTION. Sec. 3. A new section is added to chapter 74.34 RCW to read as follows:

(1) When the department opens an investigation of a report of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, the department shall, at the time of the interview of the vulnerable adult who is an alleged victim, provide a written statement of the rights afforded under this chapter and other applicable law to alleged victims or legal guardians. This statement must include the department's name, address, and telephone number and may include other appropriate referrals. The statement must be substantially in the following form:

"You are entitled to be free from abandonment, abuse, financial exploitation, and neglect. If there is a reason to believe that you have experienced abandonment, abuse, financial exploitation, or neglect, you have the right to:

(a) Make a report to the department of social and health services and law enforcement and share any information you believe could be relevant to the investigation, and identify any persons you believe could have relevant information.

(b) Be free from retaliation for reporting or causing a report of abandonment, abuse, financial exploitation, or neglect.

(c) Be treated with dignity and addressed with respectful language.

(d) Reasonable accommodation for your disability when reporting, and during investigations and administrative proceedings.

(e) Request an order that prohibits anyone who has abandoned, abused, financially exploited, or neglected you from remaining in your home, having contact with you, or accessing your money or property.

(f) Receive from the department of social and health services information and appropriate referrals to other agencies that can advocate, investigate, or take action.

(g) Be informed of the status of investigations, proceedings, court actions, and outcomes by the agency that is handling any case in which you are a victim.

(h) Request referrals for advocacy or legal assistance to help with safety planning, investigations, and hearings.

(i) Complain to the department of social and health services, formally or informally, about investigations or proceedings, and receive a prompt response."

(2) This section shall not be construed to create any new cause of action or limit any existing remedy.

NEW SECTION. Sec. 4. RCW 74.34.021 (Vulnerable adult—Definition) and 1999 c 336 s 6 are each repealed.

Passed by the Senate April 14, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 171

[Engrossed Senate Bill 5061]

VEHICLE AND VESSEL REGISTRATION AND TITLE PROVISIONS— TECHNICAL CHANGES

AN ACT Relating to reconciling changes made to vehicle and vessel registration and title provisions during the 2010 legislative sessions; amending RCW 4.24.210, 7.68.035, 18.27.100, 19.116.020, 19.118.170, 43.21A.667, 43.43.400, 43.121.100, 46.01.040, 46.04.1945, 46.04.1951, 46.04.249, 46.04.265, 46.04.3815, 46.04.429, 46.04.62260, 46.04.671, 46.04.691, 46.04.692, 46.04.705, 46.09.320, 46.09.400, 46.09.420, 46.09.450, 46.09.470, 46.09.490, 46.10.440, 46.10.470, 46.10.490, 46.10.500, 46.10.510, 46.12.550, 46.12.600, 46.12.630, 46.12.700, 46.12.730, 46.12.735, 46.12.740, 46.12.745, 46.16A.070, 46.16A.080, 46.16A.200, 46.16A.210, 46.16A.215, 46.16A.405, 46.16A.455, 46.16A.510, 46.16A.530, 46.16A.540, 46.16A.545, 46.17.040, 46.17.200, 46.17.210, 46.17.220, 46.17.230, 46.17.315, 46.17.355, 46.17.400, 46.18.010, 46.18.020, 46.18.200, 46.18.220, 46.18.255, 46.18.285, 46.18.295, 46.19.050, 46.19.060, 46.30.020, 46.32.080, 46.32.120, 46.37.010, 46.61.582, 46.61.710, 46.61.723, 46.61.725, 46.68.020, 46.68.030, 46.68.380, 46.68.420, 46.68.425, 46.68.455, 46.70.027, 46.70.101, 46.71.011, 46.71.080, 46.85.100, 46.87.010, 46.87.023, 46.87.080, 46.87.140, 46.87.230, 46.87.294, 46.87.296, 46.93.020, 47.01.440, 50.40.071, 64.44.050, 70.107.030, 70.120.010, 70.120.160, 70.120.170, 70.285.020, 77.12.170, 77.12.879, 79A.05.020, 79A.05.065, 79A.05.225, 79A.60.510, 79A.60.630, 79A.60.670, 82.08.020, 82.12.800, 82.12.801, 82.14.430, 82.50.250, 82.80.100, 84.36.080, 88.02.530, 88.02.560, 88.02.560, 88.02.590, 88.02.595, 88.02.610, 88.02.620, 88.02.640, and 88.02.650; amending 2010 c 161 s 438 (uncodified); reenacting and amending RCW 46.01.140, 46.04.670, 46.16A.030, 46.18.050, 46.18.060, 46.18.110, 46.18.130, and 48.110.020; creating a new section; recodifying RCW 46.04.391 and 46.16.900; repealing RCW 46.04.1961, 46.04.7051, 46.10.405, 46.16.30922, 46.18.030, and 88.02.655; providing effective dates; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. This act is intended to reconcile and conform amendments made in chapter 161, Laws of 2010 with other legislation passed during the 2010 legislative sessions, as well as provide technical amendments to codified sections affected by chapter 161, Laws of 2010. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy or legal implications.

Sec. 2. RCW 4.24.210 and 2006 c 212 s 6 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is

not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

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

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

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

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

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

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW ~~((46.09.020))~~ 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Sec. 3. RCW 7.68.035 and 2009 c 479 s 8 are each amended to read as follows:

(1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) When any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except as provided in subsection (2) of this

section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.101, 46.20.410, 46.52.020, ((46.10.130, 46.09.130,)) 46.10.495, 46.09.480, 46.61.5249, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, ((46.10.090(2))) 46.10.490(2), and ((46.09.120(2))) 46.09.470(2).

(3) When any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains under chapter 3.62 RCW, and all money it receives under subsection (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his or her surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to

each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the state general fund.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.50.100 and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section.

Sec. 4. RCW 18.27.100 and 2008 c 120 s 2 are each amended to read as follows:

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3)(a) All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW ((46.16.010)) 46.16A.030 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection (3)(a).

(b) The director may issue a subpoena to any person or entity selling any advertising subject to this section for the name, address, and telephone number

provided to the seller of the advertising by the purchaser of the advertising. The subpoena must have enclosed a stamped, self-addressed envelope and blank form to be filled out by the seller of the advertising. If the seller of the advertising has the information on file, the seller shall, within a reasonable time, return the completed form to the department. The subpoena must be issued no more than two days after the expiration of the issue or publication containing the advertising or after the broadcast of the advertising. The good-faith compliance by a seller of advertising with a written request of the department for information concerning the purchaser of advertising shall constitute a complete defense to any civil or criminal action brought against the seller of advertising arising from such compliance. Advertising by airwave or electronic transmission is subject to this subsection (3)(b).

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(5) A contractor shall not falsify a registration number and use it, or use an expired registration number, in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(6) Any advertising by a person, firm, or corporation soliciting work as a contractor when that person, firm, or corporation is not registered pursuant to this chapter is a violation of this chapter.

(7) An applicant or registrant who falsifies information on an application for registration commits a violation under this section.

(8)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than ten thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error.

Sec. 5. RCW 19.116.020 and 1990 c 44 s 3 are each amended to read as follows:

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

(1) "Debtor" has the meaning set forth in RCW ~~((62A.9-105(1)(d)))~~ 62A.9A-102.

(2) "Motor vehicle" means a vehicle required to be registered under chapter ~~((46.16))~~ 46.16A RCW.

(3) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(4) "Security agreement" has the meaning set forth in RCW ~~((62A.9-105(1)(l)))~~ 62A.9A-102.

(5) "Security interest" has the meaning set forth in RCW 62A.1-201(37).

(6) "Secured party" has the meaning set forth in RCW ~~((62A.9-105(1)(m)))~~ 62A.9A-102.

Sec. 6. RCW 19.118.170 and 1995 c 254 s 9 are each amended to read as follows:

Notwithstanding RCW ~~((46.12.380))~~ 46.12.635, the department of licensing shall make available to the registered owner all title history information regarding the vehicle upon request of the registered owner and receipt of a statement that he or she is investigating or pursuing rights under this chapter.

Sec. 7. RCW 43.21A.667 and 2009 c 564 s 933 are each amended to read as follows:

(1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and during the 2009-2011 fiscal biennium to provide grants for sea lettuce research and removal to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce; and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

Sec. 8. RCW 43.43.400 and 2007 c 350 s 1 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under RCW 77.08.010 ~~((49) through (54))~~ (28), (40), (44), (58), and (59), aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(b) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(2) The aquatic invasive species enforcement account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(3) Funds in the aquatic invasive species enforcement account may be appropriated to the Washington state patrol and the department of fish and wildlife to develop an aquatic invasive species enforcement program for

recreational and commercial watercraft, which includes equipment used to transport the watercraft and auxiliary equipment such as attached or detached outboard motors. Funds must be expended as follows:

(a) By the Washington state patrol, to inspect recreational and commercial watercraft that are required to stop at port of entry weigh stations managed by the Washington state patrol. The watercraft must be inspected for the presence of aquatic invasive species; and

(b) By the department of fish and wildlife to:

(i) Establish random check stations, to inspect recreational and commercial watercraft as provided for in RCW 77.12.879(3);

(ii) Inspect or delegate inspection of recreational and commercial watercraft. If the department conducts the inspection, there will be no cost to the person requesting the inspection;

(iii) Provide training to all department employees that are deployed in the field to inspect recreational and commercial watercraft; and

(iv) Provide an inspection receipt verifying that the watercraft is not contaminated after the watercraft has been inspected at a check station or has been inspected at the request of the owner of the recreational or commercial watercraft. The inspection receipt is valid until the watercraft is used again.

(4) The Washington state patrol and the department of fish and wildlife shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007.

Sec. 9. RCW 43.121.100 and 2005 c 53 s 4 are each amended to read as follows:

The council may accept contributions, grants, or gifts in cash or otherwise, including funds generated by the sale of "heirloom" birth certificates under chapter 70.58 RCW from persons, associations, or corporations and funds generated through the issuance of the "Keep Kids Safe" license plate under chapter ((46.16)) 46.18 RCW. All moneys received by the council or any employee thereof from contributions, grants, or gifts and not through appropriation by the legislature shall be deposited in a depository approved by the state treasurer to be known as the children's trust fund. Disbursements of such funds shall be on the authorization of the council or a duly authorized representative thereof and only for the purposes stated in RCW 43.121.050. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds.

Sec. 10. RCW 46.01.040 and 2010 c 161 s 1108 are each amended to read as follows:

The department is vested with all powers, functions, and duties with respect to and including the following:

(1) The motor vehicle fuel excise tax as provided in chapter 82.36 RCW;

(2) The special fuel tax as provided in chapter 82.38 RCW;

(3) The motor vehicle excise tax as provided in chapter 82.44 RCW;

(4) The travel trailers and campers excise tax as provided in chapter 82.50 RCW;

- (5) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;
- (6) Certificates of title and registration certificates as provided in chapters 46.12 and ~~((46.16))~~ 46.16A RCW;
- (7) The registration of motor vehicles as provided in chapter ~~((46.16))~~ 46.16A RCW;
- (8) Dealers' licenses as provided in chapter 46.70 RCW;
- (9) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;
- (10) The licensing of vehicle wreckers as provided in chapter 46.80 RCW;
- (11) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;
- (12) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;
- (13) Drivers' licenses as provided in chapter 46.20 RCW;
- (14) Commercial driver training schools as provided in chapter 46.82 RCW;
- (15) Financial responsibility as provided in chapter 46.29 RCW;
- (16) Accident reporting as provided in chapter 46.52 RCW;
- (17) Disposition of revenues as provided in chapter 46.68 RCW; and
- (18) The administration of all other laws relating to motor vehicles vested in the director of licenses on June 30, 1965.

Sec. 11. RCW 46.01.140 and 2010 1st sp.s. c 7 s 139, 2010 c 221 s 1, and 2010 c 161 s 204 are each reenacted and amended to read as follows:

- (1) **County auditor/agent duties.** A county auditor or other agent appointed by the director shall:
 - (a) Enter into a standard contract provided by the director ~~((as developed in consultation with the advice of the title and registration advisory committee))~~;
 - (b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the director including, but not limited to:
 - (i) Processing reports of sale;
 - (ii) Processing transitional ownership transactions;
 - (iii) Processing mail-in vehicle registration renewals until directed otherwise by legislative authority;
 - (iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;
 - (v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and
 - (vi) Collecting fees and taxes as required.
- (2) **County auditor/agent assistants and subagents.** A county auditor or other agent appointed by the director may, with approval of the director:
 - (a) Appoint assistants as special deputies to accept applications for vehicle certificates of title and to issue vehicle registrations; and
 - (b) Recommend and request that the director appoint subagencies within the county to accept applications for vehicle certificates of title and vehicle registration application issuance.
- (3) **Appointing subagents.** A county auditor or other agent appointed by the director who requests a subagency shall, with approval of the director:

(a) Use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants; and

(b) Submit all proposals to the director with a recommendation for appointment of one or more subagents who have applied through the open competitive process. If a qualified successor who is an existing subagent's sibling, spouse, or child, or a subagency employee has applied, the county auditor shall provide the name of the qualified successor and the name of one other applicant who is qualified and was chosen through the open competitive process.

(4) **Subagent duties.** A subagent appointed by the director shall:

(a) Enter into a standard contract with the county auditor or agent provided by the director (~~as developed in consultation with the title and registration advisory committee~~); and

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the county auditor or agent and the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Mailing out vehicle registrations and replacement plates to internet payment option customers until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required.

(5) **Subagent successorship.** A subagent appointed by the director who no longer wants his or her appointment may recommend a successor who is the subagent's sibling, spouse, or child, or a subagency employee. The recommended successor must participate in the open competitive process used to select an applicant. In making successor recommendations and appointment determinations, the following provisions apply:

(a) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers;

(b) A subagent may not receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment; and

(c) The appointment of a successor is intended to assist in the efficient transfer of appointments to minimize public inconvenience. The appointment of a successor does not create a proprietary or property interest in the appointment.

(6) **Standard contracts.** The standard contracts provided by the director in this section may include provisions that the director deems necessary to ensure that readily accessible and acceptable service is provided to the citizens of the state, including the full collection of fees and taxes. The standard contracts must include provisions that:

(a) Describe responsibilities and liabilities of each party related to service expectations and levels;

(b) Describe the equipment to be supplied by the department and equipment maintenance;

(c) Require specific types of insurance or bonds, or both, to protect the state against any loss of collected revenue or loss of equipment;

(d) Specify the amount of training that will be provided by each of the parties;

(e) Describe allowable costs that may be charged for vehicle registration activities as described in subsection (7) of this section; and

(f) Describe causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(7) **County auditor/agent cost reimbursement.** A county auditor or other agent appointed by the director who does not cover expenses for services provided by the standard contract may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department shall develop procedures to standardize and identify allowable costs and to verify whether a request is reasonable. Payment must be made on those requests found to be allowable from the licensing services account.

(8) **County auditor/agent revenue disbursement.** County revenues that exceed the cost of providing services described in the standard contract, calculated in accordance with the procedures in subsection (7) of this section, must be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(9) **Appointment authority.** The director has final appointment authority for county auditors or other agents or subagents.

(10) **Rules.** The director may adopt rules to implement this section.

Sec. 12. RCW 46.04.1945 and 2010 c 217 s 3 are each amended to read as follows:

"Golf cart" means a gas-powered or electric-powered four-wheeled vehicle originally designed and manufactured for operation on a golf course for sporting purposes and has a speed attainable in one mile of not more than twenty miles per hour. A golf cart is not a nonhighway vehicle or off-road vehicle as defined in RCW ((46.09.020)) 46.04.365.

Sec. 13. RCW 46.04.1951 and 2005 c 85 s 2 are each amended to read as follows:

"Gonzaga University alumni association license plates" means license plates issued under RCW ((46.16.30916)) 46.18.200 that display a symbol or artwork recognizing the efforts of the Gonzaga University alumni association in Washington state.

Sec. 14. RCW 46.04.249 and 2005 c 53 s 2 are each amended to read as follows:

"Keep Kids Safe license plates" means license plates issued under RCW ((46.16.30913)) 46.18.200 that display artwork recognizing efforts to prevent child abuse and neglect in Washington state.

Sec. 15. RCW 46.04.265 and 2004 c 221 s 2 are each amended to read as follows:

"Law enforcement memorial license plates" means license plates issued under RCW (~~(46.16.30905)~~) 46.18.200 that display a symbol honoring law enforcement officers in Washington killed in the line of duty.

Sec. 16. RCW 46.04.3815 and 2010 c 161 s 130 are each amended to read as follows:

"Parts car" means a motor vehicle that is owned by a collector to furnish parts for restoration or maintenance of a vehicle described in RCW 46.18.220(1) and 46.18.255, thus enabling a collector to preserve, restore, and maintain such a vehicle.

Sec. 17. RCW 46.04.429 and 2004 c 35 s 2 are each amended to read as follows:

"Professional firefighters and paramedics license plates" means license plates issued under RCW (~~(46.16.30904)~~) 46.18.200 that display a symbol denoting professional firefighters and paramedics.

Sec. 18. RCW 46.04.62260 and 2005 c 220 s 2 are each amended to read as follows:

"Ski & Ride Washington license plates" means license plates issued under RCW (~~(46.16.30922)~~) 46.18.200 that display a symbol or artwork recognizing the efforts of the Washington snowsports industry in this state.

Sec. 19. RCW 46.04.670 and 2010 c 217 s 2 and 2010 c 161 s 155 are each reenacted and amended to read as follows:

"Vehicle" 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, including bicycles. "Vehicle" does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds are not considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles are not considered vehicles for the purposes of chapter 46.12, (~~(46.16)~~) 46.16A, or 46.70 RCW or RCW 82.12.045. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, (~~(46.16)~~) 46.16A, 46.29, 46.37, or 46.70 RCW. A golf cart is not considered a vehicle, except for the purposes of chapter 46.61 RCW.

Sec. 20. RCW 46.04.671 and 2010 c 161 s 156 are each amended to read as follows:

"Vehicle license fee" means a fee collected by the state of Washington as a license fee, as that term is construed in Article II, section 40 of the state Constitution, for the act of registering a vehicle under chapter (~~(46.16)~~) 46.16A RCW. "Vehicle license fee" does not include license plate fees, or taxes and fees collected by the department for other jurisdictions.

Sec. 21. RCW 46.04.691 and 2005 c 48 s 2 are each amended to read as follows:

"Washington Lighthouses license plates" means license plates issued under RCW (~~(46.16.30911)~~) 46.18.200 that display a symbol or artwork recognizing the efforts of lighthouse environmental programs in Washington state.

Sec. 22. RCW 46.04.692 and 2005 c 177 s 2 are each amended to read as follows:

"Washington's National Park Fund license plates" means license plates issued under RCW (~~(46.16.30918)~~) 46.18.200 that display a symbol or artwork recognizing the efforts of Washington's National Park Fund in preserving Washington's national parks for future generations in Washington state.

Sec. 23. RCW 46.04.705 and 2005 c 71 s 2 are each amended to read as follows:

"We love our pets license plates" means license plates issued under RCW (~~(46.16.30914)~~) 46.18.200 that display a symbol or artwork recognizing the efforts of the Washington state federation of animal care and control agencies in Washington state that assists local member agencies of the federation to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation.

Sec. 24. RCW 46.09.320 and 2010 c 161 s 214 are each amended to read as follows:

The department shall issue a certificate of title to the owner of an off-road vehicle. The owner shall pay the fee established under RCW 46.17.100. Issuance of the certificate of title does not qualify the vehicle for registration under chapter (~~(46.16)~~) 46.16A RCW.

Sec. 25. RCW 46.09.400 and 2010 c 161 s 215 are each amended to read as follows:

The department shall:

- (1) Issue registrations and temporary ORV use permits for off-road vehicles;
- (2) Issue decals for off-road vehicles. The decals serve the same function as license plates for vehicles registered under chapter (~~(46.16)~~) 46.16A RCW; and
- (3) Charge a fee for each decal covering the actual cost of the decal.

Sec. 26. RCW 46.09.420 and 2010 c 161 s 217 are each amended to read as follows:

ORV registrations and decals are required under this chapter except for the following:

- (1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision of the United States or another state.
- (2) Off-road vehicles owned and operated by this state, a municipality, or a political subdivision of this state or the municipality.
- (3) Off-road vehicles operated on agricultural lands owned or leased by the off-road vehicle owner or operator.
- (4) Off-road vehicles owned by a resident of another state that have a valid ORV use permit or vehicle registration issued in accordance with the laws of the other state. This exemption applies only to the extent that a similar exemption or privilege is granted under the laws of that state.
- (5) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.
- (6) Vehicles registered under chapter (~~(46.16)~~) 46.16A RCW or, in the case of nonresidents, vehicles validly registered for operation over public highways in the jurisdiction of the owner's residence.

Sec. 27. RCW 46.09.450 and 2010 c 161 s 221 are each amended to read as follows:

(1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles; and

(b) A street, road, or highway as authorized under RCW 46.09.360.

(2) Operations of an off-road vehicle on a nonhighway road, or on a street, road, or highway as authorized under RCW 46.09.360, under this section is exempt from registration requirements of chapter ~~((46.16))~~ 46.16A RCW and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

(5) The provisions of RCW 4.24.210(5) shall apply to public landowners who allow members of the public to use public facilities accessed by a highway, street, or nonhighway road for recreational off-road vehicle use.

Sec. 28. RCW 46.09.470 and 2006 c 212 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW ((~~46.09.115(3)~~) 46.09.450(3)).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW ((~~46.09.180~~) 46.09.360).

Sec. 29. RCW 46.09.490 and 1979 ex.s. c 136 s 42 are each amended to read as follows:

(1) Except as provided in RCW ((~~46.09.120(2)~~) 46.09.470(2)) and ((~~46.09.130~~) 46.09.480) as now or hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any nonhighway vehicle shall be liable for any damage to property including damage to trees, shrubs, or growing crops injured as the result of travel by the nonhighway vehicle. The owner of such property may recover from the person responsible three times the amount of damage.

Sec. 30. RCW 46.10.440 and 2010 c 161 s 234 are each amended to read as follows:

(1) Snowmobile decals assigned to each snowmobile must be:

(a) Permanently affixed to and displayed upon each snowmobile as provided by rules adopted by the department; and

(b) Maintained in a legible condition.

(2) Dealer (~~number~~) license plates as provided for in RCW 46.10.420 may be temporarily affixed.

(3) The department shall make available a pair of identical snowmobile decals consistent with subsection (1) of this section. The decals serve the same function as license plates for vehicles registered under chapter ~~((46-16))~~ 46.16A RCW. The department shall charge each applicant for an original registration the actual cost of the snowmobile decal. The department shall make available replacement snowmobile decals for a fee equivalent to the actual cost of the snowmobile decals.

Sec. 31. RCW 46.10.470 and 1972 ex.s. c 153 s 23 are each amended to read as follows:

Notwithstanding the provisions of RCW ~~((46.10.100))~~ 46.10.460, it shall be lawful to operate a snowmobile upon a public roadway or highway:

Where such roadway or highway is completely covered with snow or ice and has been closed by the responsible governing body to motor vehicle traffic during the winter months; or

When the responsible governing body gives notice that such roadway or highway is open to snowmobiles or all-terrain vehicle use; or

In an emergency during the period of time when and at locations where snow upon the roadway or highway renders such impassible to travel by automobile; or

When traveling along a designated snowmobile trail.

Sec. 32. RCW 46.10.490 and 1980 c 148 s 1 are each amended to read as follows:

(1) It is a traffic infraction for any person to operate any snowmobile:

(a) At a rate of speed greater than reasonable and prudent under the existing conditions.

(b) In a manner so as to endanger the property of another.

(c) Without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others.

(d) Without an adequate braking device which may be operated either by hand or foot.

(e) Without an adequate and operating muffling device which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise, and, (i) on snowmobiles manufactured on or before January 4, 1973, which shall effectively limit such noise at a level of eighty-six decibels, or below, on the "A" scale at fifty feet, and (ii) on snowmobiles manufactured after January 4, 1973, which shall effectively limit such noise at a level of eighty-two decibels, or below, on the "A" scale at fifty feet, and (iii) on snowmobiles manufactured after January 1, 1975, which shall effectively limit such noise at a level of seventy-eight decibels, or below, as measured on the "A" scale at a distance of fifty feet, under testing procedures as established by the department of ecology; except snowmobiles used in organized racing events in an area designated for that purpose may use a bypass or cutout device. This section shall not affect the power of the department of ecology to adopt noise performance standards for snowmobiles. Noise performance standards adopted or to be adopted by the department of ecology shall be in addition to the standards contained in this section, but the department's standards shall supersede this section to the extent of any inconsistency.

(f) Upon the paved portion or upon the shoulder or inside bank or slope of any public roadway or highway, or upon the median of any divided highway, except as provided in RCW ~~((46.10.100))~~ 46.10.460 and ~~((46.10.110))~~ 46.10.470.

(g) In any area or in such a manner so as to expose the underlying soil or vegetation, or to injure, damage, or destroy trees or growing crops.

(h) Without a current registration decal affixed thereon, if not exempted under RCW ~~((46.10.030))~~ 46.10.410 as now or hereafter amended.

(2) It is a misdemeanor for any person to operate any snowmobile so as to endanger the person of another or while under the influence of intoxicating liquor or narcotics or habit-forming drugs.

Sec. 33. RCW 46.10.500 and 1982 c 17 s 8 are each amended to read as follows:

(1) Except as provided in RCW ~~((46.10.090(2), 46.10.055, and 46.10.130))~~ 46.10.490(2), 46.10.485, and 46.10.495, any violation of the provisions of this chapter is a traffic infraction: PROVIDED, That the penalty for failing to display a valid registration decal under RCW ~~((46.10.090))~~ 46.10.490 as now or hereafter amended shall be a fine of forty dollars and such fine shall be remitted to the general fund of the governmental unit, which personnel issued the citation, for expenditure solely for snowmobile law enforcement.

(2) In addition to the penalties provided in RCW ~~((46.10.090))~~ 46.10.490 and subsection (1) of this section, the operator and/or the owner of any snowmobile used with the permission of the owner shall be liable for three times the amount of any damage to trees, shrubs, growing crops, or other property injured as the result of travel by such snowmobile over the property involved.

Sec. 34. RCW 46.10.510 and 1994 c 262 s 3 are each amended to read as follows:

From time to time, but at least once each biennium, the director shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be a tax on snowmobile fuel, and the treasurer shall refund such amounts determined under RCW ~~((46.10.170))~~ 46.10.530, and place them in the snowmobile account in the general fund.

Sec. 35. RCW 46.12.550 and 2010 c 161 s 315 are each amended to read as follows:

(1) The department may refuse to issue or may cancel a certificate of title at any time if the department determines that an applicant for a certificate of title is not entitled to a certificate of title. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal owner or owners, and completing an affidavit of first-class mail. It is unlawful for any person to remove, drive, or operate the vehicle until a proper certificate of title has been issued. Any person removing, driving, or operating a vehicle after the refusal to issue or cancellation of the certificate of title is guilty of a gross misdemeanor.

(2)(a) The suspension of, revocation of, cancellation of, or refusal to issue a certificate of title or vehicle registration provided for in chapters 46.12 and ~~((46.16))~~ 46.16A RCW by the director is conclusive unless the person whose registration or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county or the person's county of residence.

(b) Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal, the court shall issue an order to the director to show cause why the registration should not be granted or reinstated and return the order not less than ten days after the date of service of the notice to the director. Service must be in the manner as prescribed for the service of a summons and complaint in other civil actions.

(c) Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the registration or certificate and enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

Sec. 36. RCW 46.12.600 and 2010 c 161 s 306 are each amended to read as follows:

(1)(a) The registered owner or legal owner shall:

(i) Report the destruction of the vehicle issued a certificate of title or registration certificate to the department within fifteen days of its destruction; and

(ii) Submit the certificate of title or affidavit in lieu of title marked "DESTROYED." The registered owner's name, address, and the date of destruction must be clearly shown on the certificate of title or affidavit in lieu of title.

(b) It is a gross misdemeanor to fail to notify the department and be in possession of a certificate of title of a destroyed vehicle on the sixteenth day after the vehicle is destroyed and each day thereafter.

(2) The insurance company or self-insurer shall report the destruction or total loss of vehicles issued a certificate of title or registration certificate to the department within fifteen days after the settlement claim. The report must be submitted regardless of where or in what jurisdiction the total loss occurred. An insurer shall report total loss vehicles to the department in any of the following manners:

(a) Electronically through the department's online reporting system. An insurer choosing this option must immediately destroy ownership documents after filing the electronic report;

(b) Submitting the certificate of title or affidavit in lieu of title marked "DESTROYED." The insurer's name, address, and the date of loss must be clearly shown on the certificate of title or affidavit in lieu of title; or

(c) Submitting a properly completed total loss claim settlement form provided by the department.

(3) The registered owner, legal owner, or insurer reporting the destruction or total loss of a motor vehicle six years old or older must include a statement on whether the fair market value of the motor vehicle immediately before its destruction was at least equal to the market value threshold. The age of the motor vehicle is determined by subtracting the model year from the current calendar year.

(4) ~~((Beginning January 1, 2011,))~~ The market value threshold is six thousand seven hundred ninety dollars or a greater amount as set by rule of the department. The department shall:

(a) Increase the market value threshold amount:

(i) When the consumer price index for all urban consumers, compiled by the bureau of labor statistics, United States department of labor, or its successor, for the west region, in the expenditure category "used cars and trucks," shows an annual average increase over the previous year;

(ii) By the same percentage increase of the annual average shown in the consumer price index; and

(iii) On July 1st of the year immediately following the year with the increase of the annual average;

(b) Round each increase of the market value threshold to the nearest ten dollars;

(c) Not increase the market value threshold amount if the amount of the increase would be less than fifty dollars; and

(d) Carry forward any unmade increases to succeeding years until the cumulative increase is at least fifty dollars.

Sec. 37. RCW 46.12.630 and 2005 c 340 s 1 are each amended to read as follows:

In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW (~~46.12.380~~) 46.12.635 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts,

law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing.

Sec. 38. RCW 46.12.700 and 2010 c 161 s 322 are each amended to read as follows:

(1) **Titling options.** An owner of a manufactured home shall establish ownership in the manufactured home by either:

- (a) Applying for a certificate of title as required under this chapter; or
- (b) Eliminating the certificate of title under chapter 65.20 RCW.

(2) **Exemption.** This section does not apply to a manufactured home held for resale by a dealer or manufacturer.

(3) **Transferring ownership.** A registered owner of record must sign the certificate of title releasing the owner's interest when transferring ownership of a manufactured home. If the ~~((mobile))~~ manufactured home was manufactured before June 15, 1976, the registered owner must sign an affidavit on a form approved by the department. The affidavit must state that the purchaser was notified that failure of the ~~((mobile))~~ manufactured home to meet federal housing and urban development standards or failure of the ~~((mobile))~~ manufactured home to meet a fire and safety inspection by the department of labor and industries may result in denial by a local jurisdiction of a permit to site the ~~((mobile))~~ manufactured home.

(4) **Evidence of taxes paid.** Before accepting an application for a certificate of title for a manufactured home, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to provide evidence that any taxes due on the sale of the manufactured home under chapters 82.45 and 84.52 RCW have been paid. Acceptable evidence includes a copy of:

(a) The real estate excise tax affidavit that has been stamped by the county treasurer; or

(b) A treasurer certificate that is prepared by the treasurer of the county in which a used manufactured home is located and that states that all property taxes due upon the used manufactured home being sold have been satisfied.

(5) **County assessor notification.** The department shall notify the county assessor of the county where the manufactured home is located when ownership of a manufactured home is transferred. The notification must include the name and address of the former owner and the new owner.

(6) **Title elimination.** The certificate of title for a manufactured home may be eliminated or not issued when the manufactured home is registered under chapter 65.20 RCW. If the certificate of title is eliminated or not issued, the application must be recorded in the county property records of the county where the real property to which the home is affixed is located. All vehicle license fees and taxes applicable to manufactured homes under this chapter are due and must be collected before recording the ownership with the county auditor.

(7) **Rules.** The department may adopt rules as necessary to implement this section.

Sec. 39. RCW 46.12.730 and 2010 c 8 s 9009 are each amended to read as follows:

Unless a claim of ownership to the article or articles is established pursuant to RCW ((46.12.330)) 46.12.735, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his or her successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW ((46.12.330)) 46.12.735 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof.

Sec. 40. RCW 46.12.735 and 1981 c 67 s 27 are each amended to read as follows:

(1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW ((46.12.310)) 46.12.725 through ((46.12.340)) 46.12.740 may remove the matter to a court of competent

jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof.

Sec. 41. RCW 46.12.740 and 1975-'76 2nd ex.s. c 91 s 5 are each amended to read as follows:

The seizing law enforcement agency may release the article or articles impounded pursuant to this section to the person claiming ownership without a hearing pursuant to RCW (~~(46.12.330)~~) 46.12.735 when such law enforcement agency is satisfied after an appropriate investigation as to the claimant's right to lawful possession. If no hearing is contemplated as provided for in RCW (~~(46.12.330)~~) 46.12.735 such release shall be within a reasonable time following seizure. Reasonable investigative activity, including efforts to establish the identity of the article or articles and the identity of the person entitled to lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time in which release must be made.

Sec. 42. RCW 46.12.745 and 1979 c 158 s 138 are each amended to read as follows:

An identification number shall be assigned to any article impounded pursuant to RCW (~~(46.12.310)~~) 46.12.725 in accordance with the rules promulgated by the department of licensing prior to:

- (1) The release of the article from the custody of the seizing agency; or
- (2) The use of the article by the seizing agency.

Sec. 43. RCW 46.16A.030 and 2010 c 270 s 1, 2010 c 217 s 5, and 2010 c 161 s 403 are each reenacted and amended to read as follows:

(1) Vehicles must be registered as required by this chapter and must display license plates or decals assigned by the department.

(2) It is unlawful for a person to operate any vehicle on a public highway of this state without having in full force and effect a current and proper vehicle registration and displaying license plates on the vehicle.

(3) Vehicle license plates or registration certificates, whether original issues or duplicates, may not be issued or furnished by the department until the applicant makes satisfactory application for a certificate of title or presents satisfactory evidence that a certificate of title covering the vehicle has been previously issued.

(4) Failure to make initial registration before operating a vehicle on the public highways of this state is a traffic infraction. A person committing this infraction (~~shall~~) must pay a (~~penalty~~) fine of five hundred twenty-nine dollars, which may not be suspended, deferred, or reduced. This fine is in addition to any delinquent taxes and fees that must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion. The five hundred twenty-nine dollar fine must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250.

(5) Failure to renew an expired registration before operating a vehicle on the public highways of this state is a traffic infraction.

(6) It is a gross misdemeanor for a resident, as identified in RCW 46.16A.140, to register a vehicle in another state, evading the payment of any tax or vehicle license fee imposed in connection with registration. It is punishable, in lieu of the fine in subsection (4) of this section, as follows:

(a) For a first offense(~~(s)~~):

(i) Up to one year in the county jail (~~and~~);

(ii) Payment of a fine of five hundred twenty-nine dollars plus (~~twice the amount of delinquent taxes and fees, no part of~~) any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of one thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended, deferred, or reduced; and

(iv) The delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended (~~or~~), deferred, or reduced;

(b) For a second or subsequent offense(~~(s)~~):

(i) Up to one year in the county jail (~~and~~);

(ii) Payment of a fine of five hundred twenty-nine dollars plus (~~four times the amount of delinquent taxes and fees, no part of~~) any applicable assessments, which may not be suspended, deferred, or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250;

(iii) A fine of five thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW 46.68.250, which may not be suspended (~~or~~), deferred, or reduced;

~~((c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;~~

~~(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion)) and~~

(iv) The amount of delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended, deferred, or reduced.

(7) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW 46.55.113(2).

Sec. 44. RCW 46.16A.070 and 2010 c 161 s 414 are each amended to read as follows:

(1) The department may refuse to issue or may cancel a registration certificate at any time when the department determines that an applicant for registration is not entitled to ~~((one)) a registration certificate~~. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal owner or owners, and completing an affidavit of first-class mail. It is unlawful for any person to remove, drive, or operate the vehicle until a proper registration

certificate has been issued. A person removing, driving, or operating a vehicle after the refusal to issue or cancellation of the registration is guilty of a gross misdemeanor.

(2)(a) The suspension, revocation, cancellation, or refusal by the director of a registration certificate provided under this chapter is conclusive unless the person whose registration or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county or the person's county of residence.

~~((a))~~ (b) Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal, the court shall issue an order to the director to show cause why the registration should not be granted or reinstated and return the order not less than ten days after the date of service to the director. Service must be in the same manner as prescribed for the service of a summons and complaint in other civil actions.

~~((b))~~ (c) Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the registration and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

Sec. 45. RCW 46.16A.080 and 2010 c 161 s 404 are each amended to read as follows:

The following vehicles are not required to be registered under this chapter:

(1) Converter gears used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle;

(2) Electric-assisted bicycles;

(3)(a) Farm implements, tractors, trailers, and other farm vehicles (i) operated within a radius of fifteen miles of the farm where it is principally used or garaged, including trailers designed as cook or bunk houses, (ii) used exclusively for animal herding, and (iii) temporarily operating or drawn upon the public highways, and (b) trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law;

(4) Forklifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses they serve;

(5) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175;

(6) Motor vehicles operated solely within a national recreation area that is not accessible by a state highway, including motorcycles, motor homes, passenger cars, and sport utility vehicles. This exemption applies only after initial registration;

~~((6))~~ (7) Motorized foot scooters;

~~((7))~~ (8) Nurse rigs or equipment auxiliary for the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

~~((8))~~ (9) Off-road vehicles operated on a street, road, or highway as authorized under RCW 46.09.360, or nonhighway roads under RCW 46.09.450;

~~((9))~~ (10) Special highway construction equipment;

- ~~((10))~~ (11) Dump trucks and tractor-dump trailer combinations that are:
- (a) Designed and used primarily for construction work on highways;
 - (b) Not designed or used primarily for the transportation of persons or property on a public highway; and
 - (c) Only incidentally operated or moved over the highways;
- ~~((11))~~ (12) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation;
- ~~((12))~~ (13) Tow dollies;
- ~~((13))~~ (14) Trams used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have average daily traffic of not more than fifteen thousand vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another; and
- ~~((14))~~ (15) Vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

Sec. 46. RCW 46.16A.200 and 2010 c 161 s 422 are each amended to read as follows:

(1) **Design.** All license plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures. License plates:

- (a) May vary in background, color, and design;
- (b) Must be legible and clearly identifiable as a Washington state license plate;
- (c) Must designate the name of the state of Washington without abbreviation;
- (d) Must be treated with fully reflectorized materials designed to increase visibility and legibility at night;
- (e) Must be of a size and color and show the registration period as determined by the director; and

(f) Before July 1, 2010, may display a symbol or artwork approved by the former special license plate review board and the legislature. Beginning July 1, 2010, special license plate series approved by the department and enacted into law by the legislature may display a symbol or artwork approved by the department.

(2) **Exceptions to reflectorized materials.** License plates issued before January 1, 1968, are not required to be treated with reflectorized materials.

(3) **Dealer license plates.** License plates issued to a dealer must contain an indication that the license plates have been issued to a vehicle dealer.

(4)(a) **Furnished.** The director shall furnish to all persons making satisfactory application for a vehicle registration:

- (i) Two identical license plates each containing the license plate number; or

(ii) One license plate if the vehicle is a trailer, semitrailer, camper, moped, collector vehicle, horseless carriage, or motorcycle.

(b) The director may adopt types of license plates to be used as long as the license plates are legible.

(5)(a) **Display.** License plates must be:

(i) Attached conspicuously at the front and rear of each vehicle if two license plates have been issued;

(ii) Attached to the rear of the vehicle if one license plate has been issued;

(iii) Kept clean and be able to be plainly seen and read at all times; and

(iv) Attached in a horizontal position at a distance of not more than four feet from the ground.

(b) The Washington state patrol may grant exceptions to this subsection if the body construction of the vehicle makes compliance with this section impossible.

(6) **Change of license classification.** A person who has altered a vehicle that makes the current license plate or plates invalid for the vehicle's use shall:

(a) Surrender the current license plate or plates to the department, county auditor or other agent, or subagent appointed by the director;

(b) Apply for a new license plate or plates; and

(c) Pay a change of classification fee required under RCW 46.17.310.

(7) **Unlawful acts.** It is unlawful to:

(a) Display a license plate or plates on the front or rear of any vehicle that were not issued by the director for the vehicle;

(b) Display a license plate or plates on any vehicle that have been changed, altered, or disfigured, or have become illegible;

(c) Use holders, frames, or other materials that change, alter, or make a license plate or plates illegible. License plate frames may be used on license plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the license plates can be plainly seen and read at all times;

(d) Operate a vehicle unless a valid license plate or plates are attached as required under this section;

(e) Transfer a license plate or plates issued under this chapter between two or more vehicles without first making application to transfer the license plates. A violation of this subsection (7)(e) is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate or plates have been transferred between two or more vehicles shall confiscate the license plate or plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate or plates upon application by the owner or owners and the payment of full fees and taxes; or

(f) Fail, neglect, or refuse to endorse the registration certificate and deliver the license plate or plates to the purchaser or transferee of the vehicle, except as authorized under this section.

(8) **Transfer.** (a) Standard issue license plates follow the vehicle when ownership of the vehicle changes unless the registered owner wishes to retain the license plates and transfer them to a replacement vehicle of the same use. A registered owner wishing to keep standard issue license plates shall pay the

license plate transfer fee required under RCW 46.17.200(1)(c) when applying for license plate transfer.

(b) Special license plates and personalized license plates may be treated in the same manner as described in (a) of this subsection unless otherwise limited by law.

(c) License plates issued to the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law may be treated in the same manner as described in (a) of this subsection.

(9) **Replacement.** (a) An owner or the owner's authorized representative shall apply for a replacement license plate or plates if the current license plate or plates assigned to the vehicle have been lost, defaced, or destroyed, or if one or both plates have become so illegible or are in such a condition as to be difficult to distinguish. An owner or the owner's authorized representative may apply for a replacement license plate or plates at any time the owner chooses.

(b) The application for a replacement license plate or plates must:

(i) Be on a form furnished or approved by the director; and

(ii) Be accompanied by the fee required under RCW 46.17.200(1)(a).

(c) The department shall not require the payment of any fee to replace a license plate or plates for vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty.

(10)~~((a))~~ **Periodic replacement.** License plates must be replaced periodically to ensure maximum legibility and reflectivity. The department shall:

~~((i))~~ (a) Use empirical studies documenting the longevity of the reflective materials used to make license plates;

~~((ii))~~ (b) Determine how frequently license plates must be replaced; and

~~((iii))~~ (c) Offer to owners the option of retaining the current license plate number when obtaining replacement license plates for the fee required in RCW 46.17.200(1)(b).

~~((b) Commercial motor vehicles with a gross weight in excess of twenty-six thousand pounds are exempt from periodic license plate replacement.)~~

(11) **Periodic replacement—Exceptions.** The following license plates are not required to be periodically replaced as required in subsection (10) of this section:

(a) Horseless carriage license plates issued under RCW 46.18.255 before January 1, 1987;

(b) Congressional Medal of Honor license plates issued under RCW 46.18.230;

(c) License plates for commercial motor vehicles with a gross weight greater than twenty-six thousand pounds.

(12) **Rules.** The department may adopt rules to implement this section.

(13) **Tabs or emblems.** The director may issue tabs or emblems to be attached to license plates or elsewhere on the vehicle to signify initial registration and renewals. Renewals become effective when tabs or emblems have been issued and properly displayed on license plates.

Sec. 47. RCW 46.16A.210 and 1990 c 250 s 8 are each amended to read as follows:

~~((Vehicle))~~ License plate emblems and veteran remembrance emblems ~~((shall))~~ must use fully reflectorized materials designed to provide visibility at night. Emblems ~~((shall))~~ must be designed to be affixed to a ~~((vehicle))~~ license ~~((number))~~ plate by pressure-sensitive adhesive so as not to obscure the plate identification numbers or letters.

Emblems ~~((will))~~ must be issued for display on the front and rear license ~~((number))~~ plates. Single emblems ~~((will))~~ must be issued for vehicles authorized to display one license ~~((number))~~ plate.

Sec. 48. RCW 46.16A.215 and 1994 c 194 s 5 are each amended to read as follows:

(1) The director may adopt fees to be charged by the department for emblems issued by the department under RCW ~~((46.16.319))~~ 46.18.295.

(2) The fee for each remembrance emblem issued under RCW ~~((46.16.319))~~ 46.18.295 shall be in an amount sufficient to offset the costs of production of remembrance emblems and the administration of that program by the department plus an amount for use by the department of veterans affairs, not to exceed a total fee of twenty-five dollars per emblem.

(3) The veterans' emblem account is created in the custody of the state treasurer. All receipts by the department from the issuance of remembrance emblems under RCW ~~((46.16.319))~~ 46.18.295 shall be deposited into this fund. Expenditures from the fund may be used only for the costs of production of remembrance emblems and administration of the program by the department of licensing, with the balance used only by the department of veterans affairs for projects that pay tribute to those living veterans and to those who have died defending freedom in our nation's wars and conflicts and for the upkeep and operations of existing memorials, as well as for planning, acquiring land for, and constructing future memorials. Only the director of licensing, the director of veterans affairs, or their designees may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

Sec. 49. RCW 46.16A.405 and 2010 c 161 s 437 are each amended to read as follows:

This chapter applies to the following:

(1) Campers are considered vehicles for the purposes of vehicle registration and license plate display, except for campers held as part of a manufacturer's or dealer's inventory that:

(a) Are unoccupied at all times;

(b) Have been issued a dated demonstration permit that is valid for no more than seventy-two hours. The permit must be carried in the vehicle on which the camper is mounted; and

(c) Are mounted on a properly registered vehicle.

(2) Mopeds are considered vehicles for the purposes of vehicle registration and license plate display. The department, county auditor or other agent, or subagent appointed by the director shall charge the fee required under RCW 46.17.200(1)(a) when issuing an original moped license plate. Mopeds are exempt from personal property taxes and vehicle excise taxes imposed under chapter 82.44 RCW.

(3) Wheelchair conveyances are considered vehicles for the purposes of vehicle registration and license plate display. Wheelchair conveyances that do not meet braking equipment requirements described in RCW 46.37.340 must be registered as mopeds.

Sec. 50. RCW 46.16A.455 and 2010 c 161 s 419 are each amended to read as follows:

(1) **Auto stage, bus, for hire vehicle - more than six seats.** The declared gross weight for an auto stage, bus, or for hire vehicle, except taxicabs, with a seating capacity of more than six is determined by:

(a) Multiplying the number of seats, including the driver, times one hundred fifty pounds per seat;

(b) Adding the scale weight to the product derived in (a) of this subsection; and

(c) Locating the sum derived in (b) of this subsection in the registration fee based on declared gross weight table provided in RCW 46.17.355 and rounding up to the next greater weight.

(2) **Motor truck, road tractor, truck, truck tractor -sufficient declared gross weight required.** The declared gross weight for a motor truck, road tractor, truck, or truck tractor must have a sufficient declared gross weight, as required under chapter 46.44 RCW, to cover:

(a) Its empty scale weight plus the maximum load it will carry; and

(b) The empty scale weight of any trailer it will tow and the maximum load that the trailer will carry. The declared gross weight of the motor vehicle does not need to include the trailer if:

(i) The empty scale weight of the trailer and the maximum load the trailer will carry does not exceed four thousand pounds; or

(ii) The trailer is for personal use, such as a horse trailer, travel trailer, or utility trailer.

(3) **Motor truck, road tractor, truck, and truck tractor -exceeding six thousand pounds empty scale weight.** Every truck, motor truck, truck tractor, and tractor exceeding six thousand pounds empty scale weight registered under this chapter (~~46.16~~) or chapter 46.87 RCW must be licensed for not less than one hundred fifty percent of its empty weight unless:

(a) The amount would exceed the legal limits described in RCW 46.44.041 or 46.44.042, in which event the vehicle must be licensed for the maximum weight authorized for the vehicle; or

(b) The vehicle is a fixed load vehicle.

(4) **Increasing declared gross weight.** The following provisions apply when increasing declared gross weight for a motor vehicle licensed under this section:

(a) The declared gross weight must be increased to the end of the current registration year when the declared gross weight remains at 12,000 pounds or less.

(b) For motor vehicles increasing to a declared gross weight of 14,000 pounds or more, the declared gross weight must be increased, at a minimum, to the expiration of the current declared gross weight license.

(c) The new license fee is one-twelfth of the annual license fee listed in RCW 46.17.355 for each of the number of months remaining in the registration period. The department shall:

(i) Apply credit to any gross weight license fees already paid for the full months remaining in the registration period;

(ii) Charge the monthly declared gross weight license fee required under RCW 46.17.360, in addition to any other fees or taxes due; and

(iii) Not apply credit to monthly declared gross weight license fees already used.

(d) (c) of this subsection does not apply to motor vehicles described in (a) of this subsection.

(e) Upon surrender of the current registration certificate or cab card, credit must be applied as described in (c) of this subsection.

(5) **Monthly license—Authorized.** The annual license fees required in RCW 46.17.355 for any motor vehicle or combination of vehicles having a declared gross weight of twelve thousand one pounds or more may be paid for any full registration month or months at one-twelfth of the annual license fee plus the monthly declared gross weight license fee required in RCW 46.17.360. This sum must be multiplied by the number of full months for which the fees are paid if for less than a full year.

(6) **Monthly license—Penalty.** Operation of a vehicle registered under subsection (5) of this section by any person upon the public highways after the expiration of the monthly license is a traffic infraction. The person shall pay a license fee for the vehicle involved covering an entire registration year's operation, less the fees for any registration month or months of the registration year already paid. If, within five days, a license fee for a full registration year has not been paid as required, the Washington state patrol, county sheriff, or city police shall impound the vehicle until the fees have been paid.

(7) **Camper, school bus—Exemptions.** (a) The weight of a camper must not be included when determining declared gross weight.

(b) Motor vehicles used for the transportation of school children or teachers to and from school and other school activities are exempt from subsection (1) of this section and the seating capacity fee provided in RCW 46.17.340. If the motor vehicle is used for any other purpose, it must be appropriately registered as required under this chapter.

(8) **Credit for unused license fee.** A registered owner of a motor vehicle with a declared gross weight of more than twelve thousand pounds may obtain credit for the unused portion of the license fee paid or transfer the credit to a new owner under the following conditions:

(a) The motor vehicle must have been recently sold or transferred to another owner, is no longer in the possession of the owner, or is reported destroyed under RCW 46.12.600;

(b) The available credit must be fifteen dollars or more;

(c) Credit will be given for any unused months of the declared gross weight license already purchased at the rate of one-twelfth for each full or partial month of registration;

(d) Credit only applies to license fees due under RCW 46.17.355 for the registration year for which it was purchased;

(e) Credit as used in this section may not be refunded.

Sec. 51. RCW 46.16A.510 and 1986 c 186 s 5 are each amended to read as follows:

The director, the state of Washington, and its political subdivisions (~~shall be~~) are immune from civil liability arising from the issuance of a vehicle (~~license~~) registration or license plates to a nonroadworthy vehicle.

Sec. 52. RCW 46.16A.530 and 1961 c 12 s 46.16.180 are each amended to read as follows:

It (~~shall be~~) is unlawful for the owner or operator of any vehicle not (~~licensed~~) registered annually for hire or as an auto stage and for which additional seating capacity fee as required by this chapter has not been paid, to carry passengers therein for hire.

Sec. 53. RCW 46.16A.540 and 1986 c 18 s 13 are each amended to read as follows:

It is a traffic infraction for any person to operate, or cause, permit, or suffer to be operated upon a public highway of this state any bus, auto stage, motor truck, truck tractor, or tractor, with passengers, or with a maximum gross weight, in excess of that for which the motor vehicle or combination is (~~licensed~~) registered.

Any person who operates or causes to be operated upon a public highway of this state any motor truck, truck tractor, or tractor with a maximum gross weight in excess of the maximum gross weight for which the vehicle is (~~licensed~~) registered shall be deemed to have set a new maximum gross weight and shall, in addition to any penalties otherwise provided, be required to purchase a new (~~license~~) registration covering the new maximum gross weight, and any failure to secure such new (~~license~~) registration is a traffic infraction. No such person may be permitted or required to purchase the new (~~license~~) registration for a gross weight or combined gross weight which would exceed the maximum gross weight or combined gross weight allowed by law. This section does not apply to for hire vehicles, buses, or auto stages operating principally within cities and towns.

Sec. 54. RCW 46.16A.545 and 1979 ex.s. c 136 s 48 are each amended to read as follows:

Any person violating any of the provisions of RCW (~~46.16.140~~) 46.16A.540 shall, upon a first offense, pay a penalty of not less than twenty-five dollars nor more than fifty dollars; upon a second offense pay a penalty of not less than fifty dollars nor more than one hundred dollars, and in addition the court may suspend the registration certificate (~~of license registration~~) of the vehicle for not more than thirty days; upon a third and subsequent offense pay a penalty of not less than one hundred dollars nor more than two hundred dollars, and in addition the court shall suspend the registration certificate (~~of license registration~~) of the vehicle for not less than thirty days nor more than ninety days.

Upon ordering the suspension of any registration certificate (~~of license registration~~), the court or judge shall forthwith secure (~~such~~) the registration certificate and mail it to the director.

Sec. 55. RCW 46.17.040 and 2010 c 161 s 506 are each amended to read as follows:

A subagent appointed by the director shall collect a service fee of:

(1) (~~Ten~~) Twelve dollars for changes in a certificate of title, with or without registration renewal, or for verification of record and preparation of an

affidavit of lost title other than at the time of the certificate of title application or transfer; and

(2) (~~Four~~) Five dollars for a registration renewal, issuing a transit permit, or any other service under this section.

Sec. 56. RCW 46.17.200 and 2010 c 161 s 518 are each amended to read as follows:

(1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

FEE TYPE	FEE	DISTRIBUTION
Reflectivity	\$ 2.00	RCW 46.68.070
Replacement	\$10.00	RCW 46.68.070
Replacement, motorcycle	\$ 2.00	RCW 46.68.070
<u>Original issue, moped</u>	<u>\$1.50</u>	<u>RCW 46.68.070</u>

(b) A license plate retention fee, as required under RCW 46.16A.200(10)(a)(iii), of twenty dollars if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from payment. The twenty dollar fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ten dollar license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ten dollar license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a five dollar license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

Sec. 57. RCW 46.17.210 and 2010 c 161 s 520 are each amended to read as follows:

In addition to all fees and taxes required to be paid upon application for a vehicle registration under chapter (~~46.16~~) 46.16A RCW, the holder of a personalized license plate shall pay an initial fee of forty-two dollars and thirty-two dollars for each renewal. The personalized license plate fee must be distributed as provided in RCW 46.68.435.

Sec. 58. RCW 46.17.220 and 2010 c 161 s 521 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter ~~((46.16))~~ 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(b) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(c) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(d) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(e) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(f) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(g) Gonzaga University alumni <u>association</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
(h) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(j) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(k) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(m) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(n) Ride share	\$ 25.00	N/A	RCW 46.68.030
(o) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(p) Ski and ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(q) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(r) Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
(s) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
(t) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
(u) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(v) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
(w) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

Sec. 59. RCW 46.17.230 and 2010 c 161 s 519 are each amended to read as follows:

Before accepting an application for a replacement license tab or windshield emblem, the department, county auditor or other agent, or subagent appointed by

the director shall charge a one dollar fee for each pair of tabs or windshield emblem. The license tab or windshield emblem replacement fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

Sec. 60. RCW 46.17.315 and 2010 c 161 s 524 are each amended to read as follows:

(1) Before accepting an application for a motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews by the Washington state patrol under RCW 46.32.080 or the international registration plan if base plated in a foreign jurisdiction, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a sixteen dollar commercial vehicle safety enforcement fee in addition to any other fees and taxes required by law. The sixteen dollar fee:

- (a) Must be apportioned for those vehicles operating interstate and registered under the international registration plan;
- (b) Does not apply to trailers; and
- (c) Is not refundable when the motor vehicle is no longer subject to RCW 46.32.080.

(2) The department may deduct an amount equal to the cost of administering the program. All remaining fees must be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund created in RCW 46.68.070.

Sec. 61. RCW 46.17.355 and 2010 c 161 s 530 are each amended to read as follows:

(1) In lieu of the vehicle license fee required under RCW 46.17.350 and before accepting an application for a vehicle registration for motor vehicles described in RCW 46.16A.455, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following license fee by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 pounds	\$ 38.00	\$ 38.00
6,000 pounds	\$ 48.00	\$ 48.00
8,000 pounds	\$ 58.00	\$ 58.00
10,000 pounds	\$ 60.00	\$ 60.00
12,000 pounds	\$ 77.00	\$ 77.00
14,000 pounds	\$ 88.00	\$ 88.00
16,000 pounds	\$ 100.00	\$ 100.00
18,000 pounds	\$ 152.00	\$ 152.00
20,000 pounds	\$ 169.00	\$ 169.00
22,000 pounds	\$ 183.00	\$ 183.00
24,000 pounds	\$ 198.00	\$ 198.00
26,000 pounds	\$ 209.00	\$ 209.00
28,000 pounds	\$ 247.00	\$ 247.00

30,000 pounds	\$ 285.00	\$ 285.00
32,000 pounds	\$ 344.00	\$ 344.00
34,000 pounds	\$ 366.00	\$ 366.00
36,000 pounds	\$ 397.00	\$ 397.00
<u>38,000 pounds</u>	<u>\$ 436.00</u>	<u>\$ 436.00</u>
40,000 pounds	\$ 499.00	\$ 499.00
42,000 pounds	\$ 519.00	\$ 609.00
44,000 pounds	\$ 530.00	\$ 620.00
46,000 pounds	\$ 570.00	\$ 660.00
48,000 pounds	\$ 594.00	\$ 684.00
50,000 pounds	\$ 645.00	\$ 735.00
52,000 pounds	\$ 678.00	\$ 768.00
54,000 pounds	\$ 732.00	\$ 822.00
56,000 pounds	\$ 773.00	\$ 863.00
58,000 pounds	\$ 804.00	\$ 894.00
60,000 pounds	\$ 857.00	\$ 947.00
62,000 pounds	\$ 919.00	\$ 1,009.00
64,000 pounds	\$ 939.00	\$ 1,029.00
66,000 pounds	\$ 1,046.00	\$ 1,136.00
68,000 pounds	\$ 1,091.00	\$ 1,181.00
70,000 pounds	\$ 1,175.00	\$ 1,265.00
72,000 pounds	\$ 1,257.00	\$ 1,347.00
74,000 pounds	\$ 1,366.00	\$ 1,456.00
76,000 pounds	\$ 1,476.00	\$ 1,566.00
78,000 pounds	\$ 1,612.00	\$ 1,702.00
80,000 pounds	\$ 1,740.00	\$ 1,830.00
82,000 pounds	\$ 1,861.00	\$ 1,951.00
84,000 pounds	\$ 1,981.00	\$ 2,071.00
86,000 pounds	\$ 2,102.00	\$ 2,192.00
88,000 pounds	\$ 2,223.00	\$ 2,313.00
90,000 pounds	\$ 2,344.00	\$ 2,434.00
92,000 pounds	\$ 2,464.00	\$ 2,554.00
94,000 pounds	\$ 2,585.00	\$ 2,675.00
96,000 pounds	\$ 2,706.00	\$ 2,796.00
98,000 pounds	\$ 2,827.00	\$ 2,917.00
100,000 pounds	\$ 2,947.00	\$ 3,037.00
102,000 pounds	\$ 3,068.00	\$ 3,158.00

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104,000 pounds	\$ 3,189.00	\$ 3,279.00
105,500 pounds	\$ 3,310.00	\$ 3,400.00

(2) Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

(3) If the resultant gross weight is not listed in the table provided in subsection (1) of this section, it must be increased to the next higher weight.

(4) The license fees provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005 and any other fee or tax required by law.

(5) The license fee based on declared gross weight as provided in subsection (1) of this section must be distributed under RCW 46.68.035.

Sec. 62. RCW 46.17.400 and 2010 c 161 s 535 are each amended to read as follows:

(1) Before accepting an application for one of the following permits, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay the following permit fee by permit type in addition to any other fee or tax required by law:

PERMIT TYPE	FEE	AUTHORITY	DISTRIBUTION
(a) Dealer temporary	\$15.00	RCW 46.16A.300	RCW 46.68.030
(b) Department temporary	\$.50	RCW 46.16A.305	RCW 46.68.450
(c) Farm vehicle trip	\$6.25	RCW 46.16A.330	RCW 46.68.035
(d) Nonresident military	\$10.00	RCW 46.16A.340	RCW 46.68.070
(e) Nonresident temporary snowmobile	\$5.00	RCW 46.10.450	RCW 46.68.350
(f) Special fuel trip	\$(25.00) 30.00	RCW 82.38.100	RCW 46.68.460
(g) Temporary ORV use	\$7.00	RCW 46.09.430	RCW 46.68.045
(h) Vehicle trip	\$25.00	RCW 46.16A.320	RCW 46.68.455

(2) Permit fees as provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005, except an additional filing fee may not be charged for:

- (a) Dealer temporary permits;
- (b) Special fuel trip permits; and
- (c) Vehicle trip permits.

(3) Five dollars of the fifteen dollar dealer temporary permit fee provided in subsection (1)(a) of this section must be credited to the payment of vehicle license fees at the time application for registration is made. The remainder must be deposited to the state patrol highway account created in RCW 46.68.030.

~~((4) A surcharge of five dollars must be collected when issuing a special fuel trip permit or vehicle trip permit as provided in subsection (1) of this section and must be distributed as follows:~~

- ~~(a) Under RCW 46.68.460 for special fuel trip permits; and~~
- ~~(b) Under RCW 46.68.455 for vehicle trip permits.)~~

Sec. 63. RCW 46.18.010 and 1997 c 291 s 7 are each amended to read as follows:

Persons applying to the department for special license plates shall apply on forms obtained from the department and in accordance with RCW ~~((46.16.040))~~ 46.16A.040. The applicant shall provide all information as is required by the department in order to determine the applicant's eligibility for the special license plates.

Sec. 64. RCW 46.18.020 and 2010 c 161 s 631 are each amended to read as follows:

The director shall adopt rules to implement this chapter ~~((46.18 RCW))~~, including the setting of fees.

Sec. 65. RCW 46.18.050 and 2010 1st sp.s. c 7 s 93 and 2010 c 161 s 603 are each reenacted and amended to read as follows:

~~((1)) The board shall meet periodically at the call of the chair, but must meet at least once each year within ninety days before an upcoming regular session of the legislature. The board may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members, and it must have a quorum present to take a vote on a special license plate application.~~

~~(2) The board will be compensated from the general appropriation for the department in accordance with RCW 43.03.250. Each board member will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, a board member may not be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.~~

~~(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.~~

~~(4) The department shall provide administrative support to the board, which must include at least the following:~~

~~(a) Provide general staffing to meet the administrative needs of the board;~~

~~(b) Report to the board on the reimbursement status of any new special license plate series for which the state had to pay the start-up costs;~~

~~(c)) The department shall:~~

~~(1) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization; and~~

~~((4)) (2) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series ((and present those reports to the board for review and approval)).~~

Sec. 66. RCW 46.18.060 and 2010 1st sp.s. c 7 s 94 and 2010 c 161 s 604 are each reenacted and amended to read as follows:

~~(1) ((The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

~~(2)) The ((board)) department must review and either approve or reject special license plate applications submitted by sponsoring organizations.~~

~~((3))~~ (2) Duties of the ~~(board)~~ department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house of representatives transportation committees on the special license plate applications that were considered by the ~~(board)~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~(the department,)~~ the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~(board)~~ department may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees~~(; and~~

~~(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply).~~

~~((4))~~ (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~(the special license plate review board created in RCW 46.16.705 and)~~ the department ~~(are)~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

Sec. 67. RCW 46.18.110 and 2010 1st sp.s. c 7 s 95 and 2010 c 161 s 606 are each reenacted and amended to read as follows:

(1) A sponsoring organization meeting the requirements of RCW 46.18.100, applying for the creation of a special license plate ~~(to the special license plate review board)~~ must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under RCW 46.68.380;

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for each special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate;

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.18.100;

(f) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of three thousand five hundred intended purchases of the special license plate.

(3) After an application is approved by the ~~((special license plate review board))~~ department, the application need not be reviewed again ~~((by the board))~~ for a period of three years.

Sec. 68. RCW 46.18.130 and 2010 1st sp.s. c 7 s 96 and 2010 c 161 s 607 are each reenacted and amended to read as follows:

(1) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in RCW 46.68.110 must be deposited into the motor vehicle fund created in RCW 46.68.070 until the department determines that the state's implementation costs have been fully reimbursed.

(2) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the state treasurer, and begin distributing the revenue as otherwise provided by law.

(3) If reimbursement does not occur within two years from the date the special license plate is first offered for sale to the public, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the special license plate series must be discontinued immediately. Special license plates issued before discontinuation are valid until replaced under RCW 46.16A.200(10).

~~(4) ((The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants must be deposited into the account. Only the director of the department or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, nor is an appropriation required for disbursements.~~

~~(5))~~ The department shall:

(a) Provide the special license plate applicant with a written receipt for the payment; and

(b) Maintain a record of each special license plate applicant trust account deposit including, but not limited to, the name and address of each special license plate applicant whose funds are being deposited, the amount paid, and the date of the deposit.

~~((6))~~ (5) After the department receives written notice that the special license plate applicant's application has been approved by the legislature, the director shall request that the money be transferred to the motor vehicle fund created in RCW 46.68.070.

~~((7))~~ (6) After the department receives written notice that the special license plate applicant's application has been denied by the department or the legislature, the director shall provide a refund to the applicant within thirty days.

~~((8))~~ (7) After the department receives written notice that the special license plate applicant's application has been withdrawn by the special license plate applicant, the director shall provide a refund to the applicant within thirty days.

Sec. 69. RCW 46.18.200 and 2010 c 161 s 611 are each amended to read as follows:

(1) ~~((The legislature recognizes that the special license plate review board established in RCW 46.16.705 reviews and approves applications for special license plate series.~~

~~(2))~~ Special license plate series reviewed and approved by the ~~((special license plate review board))~~ department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the ~~((special license plate review board))~~ department.

~~((3) The special license plate review board approves, and))~~ (2) The department approves and shall issue~~(s)~~ the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.
Gonzaga University alumni <u>association</u>	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.

Ski & ride Washington	Recognizes the Washington snowsports industry.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

~~((4))~~ (3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

Sec. 70. RCW 46.18.220 and 2010 c 161 s 617 are each amended to read as follows:

(1) A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a collector vehicle license plate for a motor vehicle that is at least thirty years old. The motor vehicle must be operated primarily as a collector vehicle and be in good running order. The applicant for the collector vehicle license plate shall:

(a) Purchase a registration for the motor vehicle as required under chapters ~~((46.16))~~ 46.16A and 46.17 RCW; and

(b) Pay the special license plate fee established under RCW 46.17.220(1)(d), in addition to any other fees or taxes required by law.

(2) A person applying for a collector vehicle license plate may:

(a) Receive a collector vehicle license plate assigned by the department; or

(b) Provide a Washington state issued license plate designated for general use in the year of the vehicle's manufacture.

(3) Collector vehicle license plates:

- (a) Are valid for the life of the motor vehicle;
- (b) Are not required to be renewed; and
- (c) Must be displayed on the rear of the motor vehicle.

(4) A collector vehicle registered under this section may only be used for participation in club activities, exhibitions, tours, parades, and occasional pleasure driving.

(5) Collector vehicle license plates under subsection (2)(b) of this section may be transferred from one motor vehicle to another motor vehicle described in subsection (1) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director.

Sec. 71. RCW 46.18.255 and 2010 c 161 s 623 are each amended to read as follows:

(1) A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a horseless carriage license plate for a motor vehicle that is at least forty years old. The motor vehicle must be operated primarily as a collector vehicle and be in good running order. The applicant for the horseless carriage license plate shall:

(a) Purchase a registration for the motor vehicle as required under chapters ~~((46.16))~~ 46.16A and 46.17 RCW; and

(b) Pay the special license plate fee established under RCW 46.17.220(1)(i), in addition to any other fees or taxes required by law.

(2) Horseless carriage license plates:

- (a) Are valid for the life of the motor vehicle;
- (b) Are not required to be renewed;
- (c) Are not transferrable to any other motor vehicle; and
- (d) Must be displayed on the rear of the motor vehicle.

Sec. 72. RCW 46.18.285 and 2010 c 161 s 629 are each amended to read as follows:

~~((1))~~ (1) A registered owner who uses a passenger motor vehicle for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, shall apply to the ~~((director))~~ department, county auditor or other agent, or subagent appointed by the director for special ride share license plates. The registered owner must qualify for the tax exemptions provided in RCW 82.08.0287, 82.12.0282, or 82.44.015, and pay the special ride share license plate fee required under RCW 46.17.220(1)(n) when the special ride share license plates are initially issued.

(2) The special ride share license plates:

(a) Must be of a distinguishing separate numerical series or design as defined by the department;

(b) Must be returned to the department when no longer in use or when the registered owner no longer qualifies for the tax exemptions provided in subsection (1) of this section; and

(c) Are not required to be renewed annually for motor vehicles described in RCW 46.16A.170.

(3) Special ride share license plates may be transferred from one motor vehicle to another motor vehicle as described in subsection (1) of this section

upon application to the department, county auditor or other agent, or subagent appointed by the director.

(4) Any person who knowingly makes a false statement of a material fact in the application for a special license plate under subsection (1) of this section is guilty of a gross misdemeanor.

Sec. 73. RCW 46.18.295 and 1997 c 234 s 1 are each amended to read as follows:

(1) Veterans discharged under honorable conditions (veterans) and individuals serving on active duty in the United States armed forces (active duty military personnel) may purchase a veterans remembrance emblem or campaign medal emblem. The emblem is to be displayed on ~~((vehicle))~~ license plates in the manner described by the department, existing vehicular ~~((licensing))~~ registration procedures, and current laws.

(2) Veterans and active duty military personnel who served during periods of war or armed conflict may purchase a remembrance emblem depicting campaign ribbons which they were awarded.

(3) The following campaign ribbon remembrance emblems are available:

- (a) World War I victory medal;
- (b) World War II Asiatic-Pacific campaign medal;
- (c) World War II European-African Middle East campaign medal;
- (d) World War II American campaign medal;
- (e) Korean service medal;
- (f) Vietnam service medal;
- (g) Armed forces expeditionary medal awarded after 1958; and
- (h) Southwest Asia medal.

The director may issue additional campaign ribbon emblems by rule as authorized decorations by the United States department of defense.

(4) Veterans or active duty military personnel requesting a veteran remembrance emblem or campaign medal emblem or emblems must:

- (a) Pay a prescribed fee set by the department; and
- (b) Show proof of eligibility through:
 - (i) Providing a DD-214 or discharge papers if a veteran;
 - (ii) Providing a copy of orders awarding a campaign ribbon if an individual serving on military active duty; or
 - (iii) Attesting in a notarized affidavit of their eligibility as required under this section.

(5) Veterans or active duty military personnel who purchase a veteran remembrance emblem or a campaign medal emblem must be the legal or registered owner of the vehicle on which the emblem is to be displayed.

Sec. 74. RCW 46.19.050 and 2010 c 161 s 706 are each amended to read as follows:

(1) **False information.** Knowingly providing false information in conjunction with the application for special parking privileges for persons with disabilities is a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) **Unauthorized use.** Any unauthorized use of the special placard, special license, or identification card issued under this chapter is a ~~((traffic))~~ parking infraction with a monetary penalty of two hundred fifty dollars. In addition to

any penalty or fine imposed under this subsection, two hundred dollars must be assessed.

(3) **Inaccessible access.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for a person to park in, block, or otherwise make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. The clerk of the court shall report all violations related to this subsection to the department.

(4) **Parking without placard/plate.** It is a parking infraction, with a monetary penalty of two hundred fifty dollars, for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this chapter. In addition to any penalty or fine imposed under this subsection, two hundred dollars must be assessed. If a person is charged with a violation, the person will not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this chapter as required under this chapter. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places.

(5) **Time restrictions.** A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this chapter. All time restrictions must be clearly posted.

(6) **Allocation and use of funds - reimbursement.** ~~((Funds from the penalties))~~ (a) The assessment imposed under subsections (2), (3), and (4) of this section must be allocated as follows:

(i) One hundred dollars must be deposited in the accessible communities account created in RCW 50.40.071; and

(ii) One hundred dollars must be deposited in the multimodal transportation account under RCW 47.66.070 for the sole purpose of supplementing a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation that is administered by the department of transportation.

(b) Any reduction in any penalty or fine and assessment imposed under subsections (2), (3), and (4) of this section must be applied proportionally between the penalty or fine and the assessment. When a reduced penalty is imposed under subsection (2), (3), or (4) of this section, the amount deposited in the accounts identified in (a) of this subsection must be reduced equally and proportionally.

(c) The penalty or fine amounts must be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs that it may have incurred in the removal and storage of the improperly parked vehicle.

(7) **Illegal obtainment.** Except as provided in subsection (1) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate, placard, or identification

card issued under this chapter in a manner other than that established under this chapter.

(8) **Volunteer appointment.** A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of RCW 46.19.010 and 46.19.030 or 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications that the agency deems desirable.

(a) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(b) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(c) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(9) **Community restitution.** For second or subsequent violations of this section, in addition to a monetary penalty, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons with disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons with disabilities.

(10) **Fine suspension.** The court may not suspend more than one-half of any fine imposed under subsection (2), (3), (4), or (7) of this section.

Sec. 75. RCW 46.19.060 and 2010 c 161 s 705 are each amended to read as follows:

(1) An additional fee may not be charged for special license plates for persons with disabilities except for any other fees and taxes required to be paid upon registration of a motor vehicle.

(2) A registered owner who qualifies for special parking privileges as described in RCW 46.19.010 may apply to the department for special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities. Special license plates with a special year tab for persons with disabilities are available on the following special license plate designs:

PLATE TYPE	ISSUED UNDER
Armed forces collection	RCW 46.18.210
Baseball stadium	RCW 46.18.215
Collegiate	RCW 46.18.225
Disabled American veteran	RCW 46.18.235
Endangered wildlife	RCW 46.18.200
Former prisoner of war	RCW 46.18.235
Helping kids speak	RCW 46.18.200

Keep kids safe	RCW 46.18.200
Law enforcement memorial	RCW 46.18.200
Pearl Harbor survivor	RCW 46.18.270
Personalized	RCW 46.18.275
Professional firefighters and paramedics	RCW 46.18.200
Purple Heart	RCW 46.18.280
Share the road	RCW 46.18.200
Ski & ride Washington	RCW 46.18.200
Square dancer	RCW 46.18.290
Washington lighthouses	RCW 46.18.200
Washington's national park fund	RCW 46.18.200
Washington state parks	RCW 46.18.200
Washington's wildlife collection	RCW 46.18.200
We love our pets	RCW 46.18.200
Wild on Washington	RCW 46.18.200

(3) A registered owner who chooses to purchase special license plates as described in subsection (2) of this section shall pay the applicable special license plate fee, in addition to any other fees or taxes required for registering a motor vehicle.

(4) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities must be renewed in the same manner and at the time required for the renewal of standard motor vehicle license plates under chapter ~~((46.16))~~ 46.16A RCW.

(5) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities may be transferred from one motor vehicle to another motor vehicle owned by the person with the parking privilege upon application to the department, county auditor or other agent, or subagent appointed by the director.

(6) Special license plates for persons with disabilities or special license plates with a special year tab for persons with disabilities must be removed from the motor vehicle when the person with disabilities transfers or assigns his or her interest in the motor vehicle.

Sec. 76. RCW 46.30.020 and 2010 c 161 s 1115 are each amended to read as follows:

(1)(a) No person may operate a motor vehicle subject to registration under chapter ~~((46.16))~~ 46.16A RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be

provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.18.255, governed by RCW 46.16A.170, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW.

Sec. 77. RCW 46.32.080 and 2009 c 46 s 1 are each amended to read as follows:

(1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties. The utilities and transportation commission is responsible for adoption and enforcement of safety requirements for vehicles operated by entities holding authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers holding authority under chapter 81.80 RCW.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW ~~((46.16.004))~~ 46.16A.010, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW ~~((46.16.004))~~ 46.16A.010, that operate in this state must apply for a department of transportation number, as defined in RCW ~~((46.16.004))~~ 46.16A.010, by January 1, 2008. All entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and all household goods carriers with authority under chapter 81.80 RCW, must apply for a department of transportation number by January 1, 2010.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of transportation number, as defined in RCW ~~((46.16.004))~~ 46.16A.010, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the applicant does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to an applicant who at the time of application has been placed out of service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those applicants with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to an applicant who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the

motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors.

Sec. 78. RCW 46.32.120 and 2009 c 46 s 7 are each amended to read as follows:

This chapter does not apply to vehicles exempted from registration by RCW ~~((46.16.020))~~ 46.16A.170.

Sec. 79. RCW 46.37.010 and 2010 c 217 s 6 are each amended to read as follows:

(1) It is a traffic infraction for any person to drive or move, or for a vehicle owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles that:

(a) Is in such unsafe condition as to endanger any person;

(b) Is not at all times equipped with such lamps and other equipment in proper working condition and adjustment as required by this chapter or by rules issued by the Washington state patrol;

(c) Contains any parts in violation of this chapter or rules issued by the Washington state patrol.

(2) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required under this chapter or rules issued by the Washington state patrol.

(3) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(4) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(5) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(6) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(7) The provisions of this chapter with respect to equipment required on vehicles shall not apply to:

(a) Motorcycles or motor-driven cycles except as herein made applicable;

(b) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175, except as provided in RCW 46.08.175(8).

(8) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW ~~((46.09.180))~~ 46.09.360.

(9) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(10) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(11) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(12) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

Sec. 80. RCW 46.61.582 and 2010 c 161 s 1124 are each amended to read as follows:

Any person who meets the criteria for special parking privileges under RCW 46.19.010 shall be allowed free of charge to park a vehicle being used to transport that person for unlimited periods of time in parking zones or areas including zones or areas with parking meters which are otherwise restricted as to the length of time parking is permitted. This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special placard or license plate under RCW 46.19.010 and 46.19.030 to be eligible for the privileges under this section.

Sec. 81. RCW 46.61.710 and 2009 c 275 s 9 are each amended to read as follows:

(1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with ~~((the provisions of RCW 46.16.630))~~ RCW 46.16A.405(2).

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped, electric personal assistive mobility device, motorized foot scooter, or an electric-assisted bicycle on a fully controlled limited access highway is unlawful. Operation of a moped, motorized foot scooter, or an electric-assisted bicycle on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles and motorized foot scooters may have access to highways, other than limited access highways, of the state to the same extent as bicycles. Subject to subsection (6) of this section, electric-assisted bicycles and motorized foot scooters may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles and motorized foot scooters, and state

agencies may regulate the use of motorized foot scooters on facilities and properties under their jurisdiction and control.

(6) Subsections (1) and (4) of this section do not apply to motorized foot scooters. Subsection (2) of this section applies to motorized foot scooters when the bicycle path, trail, bikeway, equestrian trail, or hiking or recreational trail was built or is maintained with federal highway transportation funds. Additionally, any new trail or bicycle path or readily identifiable existing trail or bicycle path not built or maintained with federal highway transportation funds may be used by persons operating motorized foot scooters only when appropriately signed.

(7) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(8) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes.

Sec. 82. RCW 46.61.723 and 2010 c 144 s 2 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a medium-speed electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a medium-speed electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter ~~((46.16))~~ 46.16A RCW. The department must track medium-speed electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a medium-speed electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a medium-speed electric vehicle subject to registration under chapter ~~((46.16))~~ 46.16A RCW on a highway of this state

unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a medium-speed electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of medium-speed electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with this title, except that:

(a) Local authorities may not authorize the operation of medium-speed electric vehicles on streets and highways that are part of the state highway system subject to Title 47 RCW;

(b) Local authorities may not prohibit the operation of medium-speed electric vehicles upon highways of this state having a speed limit of thirty-five miles per hour or less; and

(c) Local authorities may not establish requirements for the registration and licensing of medium-speed electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a medium-speed electric vehicle as authorized under this subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a medium-speed electric vehicle.

Sec. 83. RCW 46.61.725 and 2010 c 144 s 3 are each amended to read as follows:

(1) Absent prohibition by local authorities authorized under this section and except as prohibited elsewhere in this section, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, if:

(a) The person does not operate a neighborhood electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a neighborhood electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter ~~((46.16))~~ 46.16A RCW. The department must track neighborhood electric vehicles in a separate registration category for reporting purposes;

(c) The person does not operate a neighborhood electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a neighborhood electric vehicle subject to registration under chapter ~~((46.16))~~ 46.16A RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a neighborhood electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, or forty-five miles per hour as provided in subsection (4) of this section, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less, or forty-five miles per hour or less as provided in subsection (4) of this section, and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities provided elsewhere in this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of neighborhood electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with the provisions of this title, except that:

(a) Local authorities may not authorize the operation of neighborhood electric vehicles on streets and highways that are part of the state highway system subject to the provisions of Title 47 RCW;

(b) Local authorities may not prohibit the operation of neighborhood electric vehicles upon highways of this state having a speed limit of twenty-five miles per hour or less; and

(c) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles.

(4) In counties consisting of islands whose only connection to the mainland are ferry routes, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of forty-five miles per hour or less. A person operating a neighborhood electric vehicle as authorized under this subsection must not cross a roadway with a speed limit in excess of forty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of forty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and

highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(5) Accidents must be recorded and tracked in compliance with chapter 46.52 RCW. An accident report must indicate and be tracked separately when any of the vehicles involved are a neighborhood electric vehicle.

Sec. 84. RCW 46.68.020 and 2010 c 161 s 802 are each amended to read as follows:

~~((4))~~ The director shall forward all fees for certificates of title or other moneys accruing under chapters 46.12 and 46.17 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit these moneys as follows:

FEE	REQUIRED IN	ESTABLISHED IN	DISTRIBUTION
ORV ((registration)) certificate of title fee	RCW 46.09.320	RCW 46.17.100	RCW 47.66.070
Original certificate of title	RCW 46.12.530	RCW 46.17.100	RCW 47.66.070
Penalty for late transfer	RCW 46.12.650	RCW 46.17.140	RCW 47.66.070
Motor change	RCW 46.12.590	RCW 46.17.100	RCW 46.68.280
Transfer certificate of title	RCW 46.12.650	RCW 46.17.100	RCW 46.68.280
Security interest changes	RCW 46.12.675	RCW 46.17.100	RCW 46.68.280
Duplicate certificate of title	RCW 46.12.580	RCW 46.17.100	RCW 46.68.280
Stolen vehicle check	RCW 46.12.570	RCW 46.17.120	RCW 46.68.070
Vehicle identification number assignment	RCW 46.12.560	RCW 46.17.135	RCW 46.68.070

~~((2) The vehicle identification number inspection fee created in RCW 46.17.130 must be credited as follows:~~

~~(a) Fifteen dollars to the state patrol highway account created in RCW 46.68.030; and~~

~~(b) Fifty dollars to the motor vehicle fund created in RCW 46.68.070.)~~

Sec. 85. RCW 46.68.030 and 2010 c 161 s 803 are each amended to read as follows:

(1) The director shall forward all fees for vehicle registrations under chapters ~~((46.16))~~ 46.16A and 46.17 RCW, unless otherwise specified by law, to the state treasurer with a proper identifying detailed report. The state treasurer shall credit these moneys to the motor vehicle fund created in RCW 46.68.070.

(2) Proceeds from vehicle license fees and renewal vehicle license fees must be deposited by the state treasurer as follows:

(a) \$20.35 of each initial or renewal vehicle license fee must be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal vehicle license fees, and all other funds in the state patrol highway account must be for the sole use of the Washington state patrol

for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations.

(b) \$2.02 of each initial vehicle license fee and \$0.93 of each renewal vehicle license fee must be deposited each biennium in the Puget Sound ferry operations account.

(c) Any remaining amounts of vehicle license fees and renewal vehicle license fees that are not distributed otherwise under this section must be deposited in the motor vehicle fund.

Sec. 86. RCW 46.68.380 and 2010 c 161 s 808 are each amended to read as follows:

~~((1))~~ The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants must be deposited into the account. Only the director or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, and an appropriation is not required for disbursements.

~~((2)(a) Revenues generated from the sale of special license plates for those sponsoring organizations that used the application process in RCW 46.18.110 must be deposited into the motor vehicle fund until the department determines that the state's implementation costs have been fully reimbursed.~~

~~(b) When it is determined that the state has been fully reimbursed, the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the state treasurer, and commence the distribution of the revenue as otherwise provided by law.~~

~~(3) If reimbursement does not occur within two years from the date the plate is first offered for sale to the public, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Special license plates issued before discontinuation are valid until replaced under RCW 46.16A.200(10).)~~

Sec. 87. RCW 46.68.420 and 2010 c 161 s 809 are each amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220 ~~((that were approved by the special license plate review board under RCW 46.18.200));~~

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks

We love our pets Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

Sec. 88. RCW 46.68.425 and 2010 c 161 s 810 are each amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220 ~~((that were approved by the special license plate review board under RCW 46.18.200));~~

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle fund until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fees to the following accounts by special license plate type:

SPECIAL LICENSE PLATE TYPE	ACCOUNT	CONDITIONS FOR USE OF FUNDS
Armed forces	RCW 43.60A.140	N/A
Endangered wildlife	RCW 77.12.170	Must be used only for the department of fish and wildlife's endangered wildlife program activities
Keep kids safe	RCW 43.121.100	As specified in RCW 43.121.050
Washington state parks	RCW 79A.05.059	Provide public educational opportunities and enhancement of Washington state parks
Washington's wildlife collection	RCW 77.12.170	Only for the department of fish and wildlife's game species management activities

Sec. 89. RCW 46.68.455 and 2010 c 161 s 815 are each amended to read as follows:

~~((4))~~ The vehicle trip permit fee imposed under RCW 46.17.400(1)(h) must be distributed as follows:

~~((a))~~ (1) Five dollars to the state patrol highway account for commercial motor vehicle inspections;

~~((b))~~ (2) Five dollars to the motor vehicle fund created in RCW 46.68.070 to be distributed as follows:

(a) If paid by motor carriers, to be used for supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks programs; and

(b) If paid by a person other than a motor carrier, to be used for supporting congestion relief programs.

(3) A one dollar excise tax to the state general fund;

~~((c))~~ (4) The amount of the filing fee imposed under RCW 46.17.005(1)~~((a))~~ to be credited as required under RCW 46.68.400; and

~~((d))~~ (5) The remainder to the credit of the motor vehicle fund created in RCW 46.68.070 as an administrative fee.

~~((2))~~ The administrative fee ~~((under subsection (1)(d) of this section))~~ must be increased or decreased in an equal amount if the amount of the filing fee imposed under RCW 46.17.005(1)~~((a))~~ increases or decreases, so that the total trip permit fee is adjusted equally to compensate.

~~((3))~~ ~~The vehicle trip permit surcharge imposed under RCW 46.17.400(4) must be distributed as follows:~~

~~(a) The portion of the surcharge paid by motor carriers to the motor vehicle fund created in RCW 46.68.070 for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program; and~~

~~(b) The remainder to the motor vehicle fund created in RCW 46.68.070 for the purpose of supporting congestion relief programs.)~~

Sec. 90. RCW 46.70.027 and 1989 c 337 s 12 are each amended to read as follows:

A vehicle dealer is accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. Any violations of this chapter or applicable provisions of chapter 46.12 or ~~((46.16))~~ 46.16A RCW committed by any of these employees subjects the dealer to license penalties prescribed under RCW 46.70.101. A retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of this chapter or applicable provisions of chapter 46.12 or ~~((46.16))~~ 46.16A RCW may institute an action for recovery against the dealer and the surety bond as set forth in RCW 46.70.070. However, under this section, motor vehicle dealers who have purchased from wholesale

dealers may only institute actions against wholesale dealers and their surety bonds.

Sec. 91. RCW 46.70.101 and 2010 c 161 s 1132 are each amended to read as follows:

The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, "adjudged guilty" means in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his or her application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same, except for sales by wholesale motor vehicle auction dealers to franchise motor vehicle dealers of the same make licensed under this title or franchise motor vehicle dealers of the same make licensed by any other state;

(viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180;

(xii) Fails to have a current certificate or registration with the department of revenue.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or ~~((46.16))~~ 46.16A RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser or owner a certificate of title to a vehicle which he or she has sold or leased;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles, except for sales by wholesale motor vehicle auction dealers to motor vehicle dealers and vehicle wreckers licensed under this title or motor vehicle dealers licensed by any other state;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with actual knowledge that:

(A) It has any of the following brands on the title: "SALVAGE/REBUILT," "JUNK," or "DESTROYED"; or

(B) It has been declared totaled out by an insurance carrier and then rebuilt;

or

(C) The vehicle title contains the specific comment that the vehicle is "rebuilt";

without clearly disclosing that brand or comment in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other

vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his or her application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or ~~((46.16))~~ 46.16A RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(e) Has purchased, sold, leased, disposed of, or has in his or her possession, any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale or for lease, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale or for lease unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold, leased, or distributed in this state or transferred into this state for resale or for lease by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including, but not limited to, failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) 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;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183.

Sec. 92. RCW 46.71.011 and 1993 c 424 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) An "aftermarket body part" or "nonoriginal equipment manufacturer body part" is an exterior body panel or nonstructural body component manufactured by someone other than the original equipment manufacturer and supplied through suppliers other than those in the manufacturer's normal distribution channels.

(2) "Automotive repair" includes but is not limited to:

(a) All repairs to vehicles subject to chapter ~~((46.16))~~ 46.16A RCW that are commonly performed in a repair facility by a motor vehicle technician including the diagnosis, installation, exchange, or repair of mechanical or electrical parts or units for any vehicle, the performance of any electrical or mechanical adjustment to any vehicle, or the performance of any service work required for routine maintenance or repair of any vehicle. However, commercial fleet repair or maintenance transactions involving two or more vehicles or ongoing service or maintenance contracts involving vehicles used primarily for business purposes are not included;

(b) All work in facilities that perform one or more specialties within the automotive repair service industry including, but not limited to, body collision repair, refinishing, brake, electrical, exhaust repair or installation, frame, unibody, front-end, radiators, tires, transmission, tune-up, and windshield; and

(c) The removal, replacement, or repair of exterior body panels, the removal, replacement, or repair of structural and nonstructural body components, the removal, replacement, or repair of collision damaged suspension components, and the refinishing of automotive components.

(3) "Automotive repair facility" or "repair facility" means any person, firm, association, or corporation who for compensation engages in the business of automotive repair or diagnosis, or both, of malfunctions of motor vehicles subject to licensure under chapter ~~((46.16))~~ 46.16A RCW and repair and refinishing auto-body collision damage as well as overall refinishing and cosmetic repairs.

(4) A "rebuilt" part consists of a used assembly that has been dismantled and inspected with only the defective parts being replaced.

(5) A "remanufactured" part consists of a used assembly that has been dismantled with the core parts being remachined and all other parts replaced with new parts so as to provide performance comparable to that found originally.

Sec. 93. RCW 46.71.080 and 1982 c 62 s 10 are each amended to read as follows:

Whenever a vehicle license renewal form under RCW ~~((46.16.210))~~ 46.16A.110 is given to the registered owner of any vehicle, the department of licensing shall give to the owner written notice of the provisions of this chapter in a manner prescribed by the director of licensing.

Sec. 94. RCW 46.85.100 and 1987 c 244 s 13 are each amended to read as follows:

All agreements, arrangements, or declarations or amendments thereto shall be in writing and shall be filed with the department. Upon becoming effective, they shall supersede the provisions of RCW ((46.16.030)) 46.16A.160, chapter 46.87 RCW, or this chapter to the extent that they are inconsistent therewith. The department shall provide copies for public distribution upon request.

Sec. 95. RCW 46.87.010 and 2010 c 161 s 1140 are each amended to read as follows:

This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP). This chapter shall become effective and be implemented beginning with the 1988 registration year.

(1) Provisions and terms of the IRP prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) Owners having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapter ((46.16)) 46.16A RCW.

(4) If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day.

Sec. 96. RCW 46.87.023 and 1994 c 227 s 2 are each amended to read as follows:

(1) Rental car businesses must register with the department of licensing. This registration must be renewed annually by the rental car business.

(2) Rental cars must be titled and registered under the provisions of chapters 46.12 and ((46.16)) 46.16A RCW. The vehicle must be identified at the time of application with the rental car company business number issued by the department.

(3) Use of rental cars is restricted to the rental customer unless otherwise provided by rule.

(4) The department may suspend or cancel the exemptions, benefits, or privileges granted under this section to a rental car business that violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. The department may initiate and conduct audits, investigations, and enforcement actions as may be reasonably necessary for administering this section.

(5) The department shall adopt such rules as may be necessary to administer and enforce the provisions of this section.

Sec. 97. RCW 46.87.080 and 2005 c 194 s 6 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. License plates shall be displayed on vehicles as required by

RCW ((46.16.240)) 46.16A.200(5). 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.

(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.

(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 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)) 46.16A, 46.85, 46.87, 82.36, 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)) 46.16A, 46.85, 46.87, 82.36, 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)) 46.16A, 46.85, 46.87, 82.36, 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))~~ 46.16A, 46.85, 46.87, 82.36, 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. 98. RCW 46.87.140 and 2010 c 161 s 1143 are each amended to read as follows:

(1) Any owner engaged in interstate operations of one or more fleets of apportionable vehicles may, in lieu of registration of the vehicles under chapter ~~((46.16))~~ 46.16A RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet.

(b) The member jurisdictions in which registration is desired and such other information as member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.17.350(1)(c), 46.17.355, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) The amount due and payable for the application is the sum of the fees and taxes calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter.

Sec. 99. RCW 46.87.230 and 1987 c 244 s 36 are each amended to read as follows:

Whenever an act or omission is declared to be unlawful under chapter 46.12, (~~46.16~~) 46.16A, or 46.44 RCW or this chapter, and if the operator of the vehicle is not the owner or lessee of the vehicle but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and the owner or lessee are both subject to this chapter, with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or the lessee of the vehicle, that person is fully authorized to accept the citation or notice of infraction and execute the promise to appear on behalf of the owner or lessee.

Sec. 100. RCW 46.87.294 and 2007 c 419 s 15 are each amended to read as follows:

The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW (~~46.16.004~~) 46.16A.010.

Sec. 101. RCW 46.87.296 and 2007 c 419 s 16 are each amended to read as follows:

The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW (~~46.16.004~~) 46.16A.010.

Sec. 102. RCW 46.93.020 and 2003 c 354 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of the department of licensing.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motorsports vehicle dealer, under which the new motorsports vehicle dealer is authorized to sell, service, and repair new motorsports vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motorsports vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motorsports vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motorsports vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, grandchild, parent, brother, or sister of the owner of a new motorsports vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motorsports vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motorsports vehicle dealer who has been nominated by the owner of a new motorsports vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motorsports vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Manufacturer" means a person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motorsports vehicles or remanufactures motorsports vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means a person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unused motorsports vehicles 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, motorsports 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 a sales promotion organization, whether a person, firm, or corporation, that is engaged in promoting the sale of new and unused motorsports 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 motorsports vehicles or for supervising or contracting with their dealers or prospective dealers.

(7) "Motorsports vehicle" means a motorcycle as defined in RCW 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as defined in RCW 46.04.332; a personal watercraft as defined in RCW 79A.60.010; a snowmobile as defined in RCW ((46.10.010)) 46.04.546; a four-wheel, all-terrain vehicle; and any other motorsports vehicle defined under RCW 46.93.200 by the department that is otherwise not subject to chapter 46.96 RCW.

(8) "New motorsports vehicle dealer" or "dealer" means a person engaged in the business of buying, selling, exchanging, or otherwise dealing in new motorsports vehicles or new and used motorsports vehicles at an established place of business under a franchise, sales and service agreement, or any other contract with a manufacturer of any one or more types of new motorsports vehicles. The term does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

(9) "Owner" means a person holding an ownership interest in the business entity operating as a new motorsports vehicle dealer and who is the designated dealer in the new motorsports vehicle franchise agreement.

(10) "Person" means a natural person, partnership, stock company, corporation, trust, agency, or any other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(11) "Place of business" means a permanent, enclosed commercial building, situated within this state, and the real property on which it is located, at which the business of a motorsports vehicle dealer, including the display and repair of motorsports vehicles, may be lawfully conducted in accordance with the terms of all applicable laws and at which the public may contact the motorsports vehicle dealer and employees at all reasonable times.

(12) "Relevant market area" is defined as follows:

(a) If the population in the county in which the existing, proposed new, or relocated dealership is located or is to be located is four hundred thousand or more, the relevant market area is the geographic area within the radius of ten miles around the existing, proposed new, or relocated place of business for the dealership;

(b) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the existing, proposed new, or relocated place of business for the dealership;

(c) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of twenty miles around the existing, proposed new, or relocated place of business for the dealership;

(d) In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, will be accumulated for all census tracts either wholly or partially within the relevant market area.

Sec. 103. RCW 47.01.440 and 2008 c 14 s 8 are each amended to read as follows:

To support the implementation of RCW 47.04.280 and 47.01.078(4), the department shall adopt broad statewide goals to reduce annual per capita vehicle miles traveled by 2050 consistent with the stated goals of executive order 07-02. Consistent with these goals, the department shall:

(1) Establish the following benchmarks using a statewide baseline of seventy-five billion vehicle miles traveled less the vehicle miles traveled attributable to vehicles licensed under RCW ((46.16.070)) 46.16A.455 and weighing ten thousand pounds or more, which are exempt from this section:

(a) Decrease the annual per capita vehicle miles traveled by eighteen percent by 2020;

(b) Decrease the annual per capita vehicle miles traveled by thirty percent by 2035; and

(c) Decrease the annual per capita vehicle miles traveled by fifty percent by 2050;

(2) By July 1, 2008, establish and convene a collaborative process to develop a set of tools and best practices to assist state, regional, and local entities in making progress towards the benchmarks established in subsection (1) of this section. The collaborative process must provide an opportunity for public review and comment and must:

(a) Be jointly facilitated by the department, the department of ecology, and the department of community, trade, and economic development;

(b) Provide for participation from regional transportation planning organizations, the Washington state transit association, the Puget Sound clean air agency, a statewide business organization representing the sale of motor vehicles, at least one major private employer that participates in the commute trip reduction program, and other interested parties, including but not limited to parties representing diverse perspectives on issues relating to growth, development, and transportation;

(c) Identify current strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state;

(d) Identify potential new revenue options for local and regional governments to authorize to finance vehicle miles traveled reduction efforts;

(e) Provide for the development of measurement tools that can, with a high level of confidence, measure annual progress toward the benchmarks at the local, regional, and state levels, measure the effects of strategies implemented to reduce vehicle miles traveled and adequately distinguish between common travel purposes, such as moving freight or commuting to work, and measure trends of vehicle miles traveled per capita on a five-year basis;

(f) Establish a process for the department to periodically evaluate progress toward the vehicle miles traveled benchmarks, measure achieved and projected emissions reductions, and recommend whether the benchmarks should be adjusted to meet the state's overall goals for the reduction of greenhouse gas emissions;

(g) Estimate the projected reductions in greenhouse gas emissions if the benchmarks are achieved, taking into account the expected implementation of

existing state and federal mandates for vehicle technology and fuels, as well as expected growth in population and vehicle travel;

(h) Examine access to public transportation for people living in areas with affordable housing to and from employment centers, and make recommendations for steps necessary to ensure that areas with affordable housing are served by adequate levels of public transportation; and

(i) By December 1, 2008, provide a report to the transportation committees of the legislature on the collaborative process and resulting recommended tools and best practices to achieve the reduction in annual per capita vehicle miles traveled goals.

(3) Included in the December 1, 2008, report to the transportation committees of the legislature, the department shall identify strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state that recognize the differing urban and rural transportation requirements.

(4) Prior to implementation of the goals in this section, the department, in consultation with the department of community, trade, and economic development, cities, counties, local economic development organizations, and local and regional chambers of commerce, shall provide a report to the appropriate committees of the legislature on the anticipated impacts of the goals established in this section on the following:

(a) The economic hardship on small businesses as it relates to the ability to hire and retain workers who do not reside in the county in which they are employed;

(b) Impacts on low-income residents;

(c) Impacts on agricultural employers and their employees, especially on the migrant farmworker community;

(d) Impacts on distressed rural counties; and

(e) Impacts in counties with more than fifty percent of the land base of the county in public or tribal lands.

Sec. 104. RCW 48.110.020 and 2010 c 89 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the

guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(6) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(7) "Motor vehicle" means any vehicle subject to registration under chapter ~~((46.16))~~ 46.16A RCW.

(8) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(9) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(10) "Protection product" means any product offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

(11) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

(12) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(13) "Protection product guarantee provider" means a person who is contractually obligated to the protection product guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(14) "Protection product seller" means the person who sells the protection product to the consumer.

(15) "Provider fee" means the consideration paid by a consumer for a service contract.

(16) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(17)(a) "Service contract" means a contract or agreement for consideration over and above the lease or purchase price of the property for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or

structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(b) "Service contract" also includes a contract or agreement sold for separately stated consideration for a specific duration to perform the repair or replacement of tires and/or wheels damaged as a result of coming into contact with road hazards including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps. However, a contract or agreement meeting the definition under this subsection (17)(b) in which the party obligated to perform is either a tire or wheel manufacturer or a motor vehicle manufacturer is exempt from the requirements of this chapter.

(18) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(19) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(20) "Service contract seller" means the person who sells the service contract to the consumer.

(21) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

Sec. 105. RCW 50.40.071 and 2010 c 215 s 2 are each amended to read as follows:

(1) The accessible communities account is created in the custody of the state treasurer. One hundred dollars of the assessment imposed under RCW ((46.16.381 (7), (8), and (9))) 46.19.050 (2), (3), and (4) must be deposited into the account. Any reduction in the penalty or fine and assessment imposed under section 6, chapter 215, Laws of 2010 shall be applied proportionally between the penalty or fine and the assessment.

(2) The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Only the commissioner may authorize expenditures from the account.

(3) Expenditures from the account may be used for promoting greater awareness of disability issues and improved access for and inclusion and acceptance of persons with disabilities in communities in the state of Washington, including:

(a) Reimbursing travel, per diem, and reasonable accommodation for county accessible community advisory committee meetings and committee sponsored activities including, but not limited to, supporting the involvement of people with disabilities and disability ((~~organizations~~)) organizations in emergency planning and emergency preparedness activities;

(b) Establishing and maintaining an accessible communities web site;

(c) Providing training or technical assistance for county accessible community advisory committees;

(d) A grant program for funding proposals developed and submitted by county accessible community advisory committees to promote greater awareness of disability issues and acceptance, inclusion, and access for persons with disabilities within the community;

(e) Reimbursing the state agency that provides administrative support to the governor's committee on disability issues and employment for costs associated with implementing chapter 215, Laws of 2010; and

(f) Programming changes to the judicial information system accounting module required for disbursement of funds to this account.

Sec. 106. RCW 64.44.050 and 2008 c 201 s 1 are each amended to read as follows:

(1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW (~~88.02.010~~) 88.02.310, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decontaminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs

incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW ~~((88.02.010))~~ 88.02.310 whose sole basis of ownership is a bona fide security interest is responsible for costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by submitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless of when received.

Sec. 107. RCW 70.107.030 and 1974 ex.s. c 183 s 3 are each amended to read as follows:

The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in

identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW ((~~46.09.020~~) 46.09.310) contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975.

Sec. 108. RCW 70.120.010 and 1991 c 199 s 201 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 of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter ~~((46.16))~~ 46.16A RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030.

Sec. 109. RCW 70.120.160 and 1989 c 240 s 3 are each amended to read as follows:

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW ~~((46.16.015))~~ 46.16A.060 no longer applied.

Sec. 110. RCW 70.120.170 and 2005 c 295 s 6 are each amended to read as follows:

(1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW ~~((46.16.015(2)))~~ 46.16A.060(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a ~~((licensed))~~ registered vehicle as provided under RCW ~~((46.16.015))~~ 46.16A.060.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts ~~((must))~~ must comply with the procedures established for competitive bids in chapter 43.19 RCW.

(d) Beginning in 2012, authorize businesses other than those contracted to operate inspection stations under (c) of this subsection to conduct vehicle emission inspections. Businesses authorized under this subsection may also inspect and perform, for compensation, repairs on vehicles. The fee limitations under subsection (4) of this section do not apply to the fee charged for a vehicle emissions inspection by a business authorized to conduct vehicle emission inspections under this subsection. The director may establish by rule a fee to be paid to the department for the oversight costs for each vehicle emission inspection performed by a business authorized under this subsection (2)(d).

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards; or
- (d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

(6) This section expires January 1, 2020.

Sec. 111. RCW 70.285.020 and 2010 c 147 s 2 are each amended to read as follows:

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

(1) "Accredited laboratory" means a laboratory that is:

(a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:

(a) Does not contain:

(i) More than 0.5 percent copper or its compounds by weight;

(ii) The constituents identified in RCW 70.285.030 at or above the concentrations specified; and

(iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;

(b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

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

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to (~~licensing~~) registration requirements under RCW (~~46.16.010~~) 46.16A.030.

(b) "Motor vehicle" does not include:

(i) Motorcycles as defined in RCW 46.04.330;

(ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(iii) Military combat vehicles;

(iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW (~~46.16.160~~) 46.16A.320; or

(v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles,

and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years.

Sec. 112. RCW 77.12.170 and 2009 c 333 s 13 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife account 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, unless the property is seized or recovered through a fish, shellfish, or wildlife enforcement action;
- (c) The assessment of administrative penalties, and the sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and 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, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter ~~((46.16))~~ 46.17 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320. However, this excludes fish and shellfish overages, and court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action, as such moneys must be deposited pursuant to RCW 77.15.425;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The department's share of revenues from auctions and raffles authorized by the commission; and
- (j) The sale of watchable wildlife decals under RCW 77.32.560.

(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 account.

Sec. 113. RCW 77.12.879 and 2009 c 333 s 22 are each amended to read as follows:

(1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW ~~((88.02.050))~~ 88.02.640(3)(a)(i) must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

- (a) To inspect recreational and commercial watercraft;
- (b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;
- (c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. A person who enters Washington by road transporting any commercial or recreational watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department must have in his or her possession valid documentation that the watercraft has been inspected and found free of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005.

Sec. 114. RCW 79A.05.020 and 1999 c 249 s 301 are each amended to read as follows:

In addition to whatever other duties may exist in law or be imposed in the future, it is the duty of the commission to:

- (1) Implement integrated pest management practices and regulate pests as required by RCW 17.15.020;
- (2) Take steps necessary to control spartina and purple loosestrife as required by RCW 17.26.020;
- (3) Participate in the implementation of chapter 19.02 RCW;

(4) Coordinate planning and provide staffing and administrative assistance to the Lewis and Clark trail committee as required by RCW 27.34.340;

(5) Administer those portions of chapter 46.10 RCW not dealing with the registration ((and licensing)) of snowmobiles as required by RCW ((46.10.210)) 46.10.370;

(6) Consult and participate in the scenic and recreational highway system as required by chapter 47.39 RCW; and

(7) Develop, prepare, and distribute information relating to marine oil recycling tanks and sewage holding tank pumping stations, in cooperation with other departments, as required by chapter 88.02 RCW.

The commission has the power reasonably necessary to carry out these duties.

Sec. 115. RCW 79A.05.065 and 2010 c 161 s 1163 are each amended to read as follows:

(1)(a) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen's pass which shall: (i) Entitle such a person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) The commission shall grant a senior citizen's pass to any person who applies for the senior citizen's pass and who meets the following requirements:

(i) The person is at least sixty-two years of age;

(ii) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(iii) The person and his or her spouse have a combined income that would qualify the person for a property tax exemption pursuant to RCW 84.36.381. The financial eligibility requirements of this subsection (1)(b)(iii) apply regardless of whether the applicant for a senior citizen's pass owns taxable property or has obtained or applied for such property tax exemption.

(c) Each senior citizen's pass granted pursuant to this section is valid as long as the senior citizen meets the requirements of (b)(ii) of this subsection. A senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(d) A holder of a senior citizen's pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in (b) of this subsection. The holder shall have the pass returned upon providing proof to the satisfaction of the director that the holder meets the eligibility criteria for obtaining the senior citizen's pass.

(2)(a) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for permanent disability under RCW 71A.10.020(3) due to unemployability full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW ((46.16.381)) 46.19.010 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall: (i) Entitle such a person, and members of his or her camping unit, to

a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) A card, decal, or special license plate issued for a permanent disability under RCW 46.19.010 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

(3) Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall: (a) Entitle such a person, and members of his or her camping unit, to free use of any campsite within any state park; (b) entitle such a person to free admission to any state park; and (c) entitle such a person to an exemption from any reservation fees.

(4)(a) Any Washington state resident who provides out-of-home care to a child, as either a licensed foster-family home or a person related to the child, is entitled to a foster home pass.

(b) An applicant for a foster home pass must request a pass in the manner required by the commission. Upon receipt of a properly submitted request, the commission shall verify with the department of social and health services that the applicant qualifies under (a) of this subsection. Once issued, a foster home pass is valid for the period, which may not be less than one year, designated by the commission.

(c) When accompanied by a child receiving out-of-home care from the pass holder, a foster home pass: (i) Entitles such a person, and members of his or her camping unit, to free use of any campsite within any state park; and (ii) entitles such a person to free admission to any state park.

(d) For the purposes of this subsection (4):

(i) "Out-of-home care" means placement in a foster-family home or with a person related to the child under the authority of chapter 13.32A, 13.34, or 74.13 RCW;

(ii) "Foster-family home" has the same meaning as defined in RCW 74.15.020; and

(iii) "Person related to the child" means those persons referred to in RCW 74.15.020(2)(a) (i) through (vi).

(5) All passes issued pursuant to this section are valid at all parks any time during the year. However, the pass is not valid for admission to concessionaire operated facilities.

(6) The commission shall negotiate payment and costs, to allow holders of a foster home pass free access and usage of park campsites, with the following nonoperated, nonstate-owned parks: Central Ferry, Chief Timothy, Crow Butte, and Lyons Ferry. The commission shall seek state general fund reimbursement on a biennial basis.

(7) The commission may deny or revoke any Washington state park pass issued under this section for cause, including but not limited to the following:

(a) Residency outside the state of Washington;

(b) Violation of laws or state park rules resulting in eviction from a state park;

(c) Intimidating, obstructing, or assaulting a park employee or park volunteer who is engaged in the performance of official duties;

(d) Fraudulent use of a pass;

(e) Providing false information or documentation in the application for a state parks pass;

(f) Refusing to display or show the pass to park employees when requested; or

(g) Failing to provide current eligibility information upon request by the agency or when eligibility ceases or changes.

(8) This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

(9) The commission may engage in a mutually agreed upon reciprocal or discounted program for all or specific pass programs with other outdoor recreation agencies.

(10) The commission shall adopt those rules as it finds appropriate for the administration of this section. Among other things, the rules shall prescribe a definition of "camping unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such a person, a minimum Washington residency requirement for applicants for a senior citizen's pass, and an application form to be completed by applicants for a senior citizen's pass.

Sec. 116. RCW 79A.05.225 and 1999 c 249 s 1401 are each amended to read as follows:

In addition to its other powers, duties, and functions the commission may:

(1) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(2) Provide and issue upon payment of the proper fee, under RCW 79A.05.230, 79A.05.240, and 46.61.585, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(3) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(4) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW ((~~46.10.210~~)) 46.10.370, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be

presumed to be a known dangerous artificial latent condition for the purposes of this chapter.

Sec. 117. RCW 79A.60.510 and 2007 c 341 s 57 are each amended to read as follows:

The legislature finds that the waters of Washington state provide a unique and valuable recreational resource to large and growing numbers of boaters. Proper stewardship of, and respect for, these waters requires that, while enjoying them for their scenic and recreational benefits, boaters must exercise care to assure that such activities do not contribute to the despoliation of these waters, and that watercraft be operated in a safe and responsible manner. The legislature has specifically addressed the topic of access to clean and safe waterways by requiring the 1987 boating safety study and by establishing the Puget Sound partnership.

The legislature finds that there is a need to educate Washington's boating community about safe and responsible actions on our waters and to increase the level and visibility of the enforcement of boating laws. To address the incidence of fatalities and injuries due to recreational boating on our state's waters, local and state efforts directed towards safe boating must be stimulated. To provide for safe waterways and public enjoyment, portions of the watercraft excise tax and boat registration fees should be made available for boating safety and other boating recreation purposes.

In recognition of the need for clean waterways, and in keeping with the Puget Sound partnership's water quality work plan, the legislature finds that adequate opportunities for responsible disposal of boat sewage must be made available. There is hereby established a five-year initiative to install sewage pumpout or sewage dump stations at appropriate marinas.

To assure the use of these sewage facilities, a boater environmental education program must accompany the five-year initiative and continue to educate boaters about boat wastes and aquatic resources.

The legislature also finds that, in light of the increasing numbers of boaters utilizing state waterways, a program to acquire and develop sufficient waterway access facilities for boaters must be undertaken.

To support boating safety, environmental protection and education, and public access to our waterways, the legislature declares that a portion of the income from boating-related activities, as specified in RCW 82.49.030 and (~~88.02.040~~) 88.02.650, should support these efforts.

Sec. 118. RCW 79A.60.630 and 2005 c 392 s 3 are each amended to read as follows:

(1) The commission shall establish and implement by rule a program to provide required boating safety education. The boating safety education program shall include training on preventing the spread of aquatic invasive species. The program shall be phased in so that all boaters not exempted under RCW 79A.60.640(3) are required to obtain a boater education card by January 1, 2016. To obtain a boater education card, a boater shall provide a certificate of accomplishment issued by a boating educator for taking and passing an accredited boating safety education course, or pass an equivalency exam, or provide proof of completion of a course that meets the standard adopted by the commission.

(2) As part of the boating safety education program, the commission shall:

(a) Establish a program to be phased over eleven years starting July 1, 2005, with full implementation by January 1, 2016. The period July 1, 2005, through December 31, 2007, will be program development, boater notification of the new requirements for mandatory education, and processing cards to be issued to individuals having taken an accredited course prior to January 1, 2008. The schedule for phase-in of the mandatory education requirement by age group is as follows:

January 1, 2008 - All boat operators twenty years old and younger;

January 1, 2009 - All boat operators twenty-five years old and younger;

January 1, 2010 - All boat operators thirty years old and younger;

January 1, 2011 - All boat operators thirty-five years old and younger;

January 1, 2012 - All boat operators forty years old and younger;

January 1, 2013 - All boat operators fifty years old and younger;

January 1, 2014 - All boat operators sixty years old and younger;

January 1, 2015 - All boat operators seventy years old and younger;

January 1, 2016 - All boat operators;

(b) Establish a minimum standard of boating safety education accomplishment. The standard must be consistent with the applicable standard established by the national association of state boating law administrators;

(c) Adopt minimum standards for boating safety education course of instruction and examination that ensures compliance with the national association of state boating law administrators minimum standards;

(d) Approve and provide accreditation to boating safety education courses operated by volunteers, or commercial or nonprofit organizations, including, but not limited to, courses given by the United States coast guard auxiliary and the United States power squadrons;

(e) Develop an equivalency examination that may be taken as an alternative to the boating safety education course;

(f) Establish a fee of ten dollars for the boater education card to fund all commission activities related to the boating safety education program created by chapter 392, Laws of 2005, including the initial costs of developing the program. Any surplus funds resulting from the fees received shall be distributed by the commission as grants to local marine law enforcement programs approved by the commission as provided in RCW (~~(88.02.040)~~) 88.02.650;

(g) Establish a fee for the replacement of the boater education card that covers the cost of replacement;

(h) Consider and evaluate public agency and commercial opportunities to assist in program administration with the intent to keep administrative costs to a minimum;

(i) Approve and provide accreditation to boating safety education courses offered online; and

(j) Provide a report to the legislature by January 1, 2008, on its progress of implementation of the mandatory education program.

Sec. 119. RCW 79A.60.670 and 2007 c 311 s 2 are each amended to read as follows:

(1) The boating activities program is created in the (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board.

(2) The (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board shall distribute moneys appropriated from the boating activities account created in RCW 79A.60.690 as follows, or as otherwise appropriated by the legislature, after deduction for the (~~(committee's)~~) board's expenses in administering the boating activities (~~(grant)~~) program and for related studies:

(a) To the commission for boater safety, boater education, boating-related law enforcement activities, activities included in RCW (~~(88.02.040)~~) 88.02.650, related administrative expenses, and boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating;

(b) For grants to state agencies, counties, municipalities, port districts, federal agencies, nonprofit organizations, and Indian tribes to improve boating access to water and marine parks, enhance the boater experience, boater safety, boater education, and boating-related law enforcement activities, and to provide funds for boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating; and

(c) If the amount available for distribution from the boating activities account is equal to or less than two million five hundred thousand dollars per fiscal year, then eighty percent of the amount available must be distributed to the commission for the purposes of (a) of this subsection and twenty percent for grants in (b) of this subsection. Amounts available for distribution in excess of two million five hundred thousand dollars per fiscal year shall be distributed by the (~~(committee)~~) board for purposes of (a) and (b) of this subsection.

(3) The (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board shall establish an application process for boating activities grants.

(4) Agencies receiving grants for capital purposes from the boating activities account shall consider the possibility of contracting with the 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.

(5) To solicit input on the boating activities grant application process, criteria for grant awards, and use of grant moneys, and to determine the interests of the boating community, the (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board shall solicit input from a boating activities advisory committee. The (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board may utilize a currently established boating issues committee that has similar responsibility for input on recreational boating-related funding issues. Members of the boating activities advisory committee are not eligible for compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The (~~(interagency committee for outdoor recreation)~~) recreation and conservation funding board may adopt rules to implement this section.

Sec. 120. RCW 82.08.020 and 2010 c 106 s 212 are each amended to read as follows:

(1) There is levied and collected a tax equal to six and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road ~~((and))~~ vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW ~~((46.09.020))~~ 46.09.310, and snowmobiles as defined in RCW ~~((46.10.010))~~ 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 121. RCW 82.12.800 and 1997 c 293 s 1 are each amended to read as follows:

(1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW ~~((88.02.010))~~ 88.02.310, by the manufacturer of the vessel:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, to include performance, endurance, and sink testing, if the vessel is to be held for sale;

(b) Training activities of a manufacturer's employees, agents, or subcontractors involved in the development and manufacturing of the manufacturer's vessels, if the vessel is to be held for sale;

(c) Activities to promote the sale of the manufacturer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from vessel promotional events for the express purpose of displaying a manufacturer's vessels;

(d) Any vessels loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-

two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW ((88.02.010)) 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale.

Sec. 122. RCW 82.12.801 and 1997 c 293 s 2 are each amended to read as follows:

(1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW ((88.02.010)) 88.02.310, by a vessel dealer registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

(b) Training activity of a dealer's employees, agents, or subcontractors involved in the sale of the dealer's vessels, if the vessel is held for sale;

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel that it is, in fact, for sale and the identification of the registered vessel dealer offering the vessel for sale is also displayed on the vessel;

(d) Any vessel loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW ((88.02.010)) 88.02.310, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale.

Sec. 123. RCW 82.14.430 and 2006 c 311 s 17 are each amended to read as follows:

(1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.1 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must 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 taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.1 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller shall collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road ~~((and))~~ vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW ~~((46.09.020))~~ 46.09.310, and snowmobiles as defined in RCW ~~((46.10.010))~~ 46.04.546.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district shall provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected.

Sec. 124. RCW 82.50.250 and 1967 ex.s. c 149 s 59 are each amended to read as follows:

Whenever this chapter refers to chapter~~((s))~~ 46.12, ~~((46.16))~~ 46.16A, or 82.44 RCW, with references to "house trailers", the term "house trailer" as used in those chapters shall be construed to include and embrace "mobile home and travel trailer" as used in chapter 149, Laws of 1967 ex. sess.

Sec. 125. RCW 82.80.100 and 2002 c 56 s 408 are each amended to read as follows:

(1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may set and impose an annual local option vehicle license fee, or a schedule of fees based upon the age of the vehicle, of up to one hundred dollars per motor vehicle registered within the boundaries of the region on every motor vehicle. As used in this section "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road ~~((and))~~ vehicles as defined in RCW 46.04.365, nonhighway vehicles as defined in RCW ~~((46.09.020))~~ 46.09.310, and snowmobiles as defined in RCW ~~((46.10.010))~~ 46.04.546. Vehicles registered under chapter 46.87 RCW and the international registration plan are exempt from the annual local option vehicle license fee set forth in this section. The department of licensing shall administer and collect this fee on behalf of regional transportation investment districts and remit this fee to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(2) The local option vehicle license fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(3) A regional transportation investment district imposing the local option vehicle license fee or initiating an exemption process shall enter into a contract with the department of licensing. The contract must contain provisions that fully recover the costs to the department of licensing for collection and administration of the fee.

(4) A regional transportation investment district imposing the local option fee shall delay the effective date of the local option vehicle license fee imposed by this section at least six months from the date of the final certification of the approval election to allow the department of licensing to implement the administration and collection of or exemption from the fee.

Sec. 126. RCW 84.36.080 and 2000 c 103 s 24 are each amended to read as follows:

(1) All ships and vessels which are exempt from excise tax under RCW 82.49.020(2) and excepted from the registration requirements of RCW ~~((88.02.030(9)))~~ 88.02.570(10) shall be and are hereby made exempt from all ad valorem taxes, except taxes levied for any state purpose.

(2) All ships and vessels listed in the state or federal register of historical places are exempt from all ad valorem taxes.

Sec. 127. RCW 88.02.530 and 2010 c 161 s 1015 are each amended to read as follows:

(1) A legal owner or the legal owner's authorized representative shall promptly apply for a duplicate certificate of title if a certificate of title is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate certificate of title must:

- (a) Include information required by the department;
- (b) Be accompanied by an affidavit of loss or destruction;
- (c) Be accompanied by the fee required in RCW 88.02.640(1)~~((j))~~ (k).

(2) The duplicate certificate of title must contain the word "duplicate." It must be mailed to the first priority secured party named in it or, if none, to the registered owner.

(3) A person recovering a certificate of title for which a duplicate has been issued shall promptly return the certificate of title that has been recovered to the department.

Sec. 128. RCW 88.02.560 and 2010 c 161 s 1019 are each amended to read as follows:

(1) An application for vessel registration must be made by the owner or the owner's authorized representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department. The application must contain:

- (a) The name and address of each owner of the vessel;
- (b) Other information the department may require; and
- (c) The signature of at least one owner.

(2) The application for vessel registration must be accompanied by the:

- (a) Vessel registration fee required under RCW 88.02.640(1)(~~(h)~~) (i);
- (b) Derelict vessel and invasive species removal fee under RCW 88.02.640(3)(a) and derelict vessel removal surcharge required under RCW 88.02.640(~~(3)(a)~~) (4);

(c) Filing fee required under RCW 88.02.640(1)(~~(f)~~) (e);

(d) License plate technology fee required under RCW 88.02.640(1)(~~(e)~~) (f);

(e) License service fee required under RCW 88.02.640(1)(~~(f)~~) (g); and

(f) Watercraft excise tax required under chapter 82.49 RCW.

(3) Upon receipt of an application for vessel registration and the required fees and taxes, the department shall assign a registration number and issue a decal for the vessel. The registration number and decal must be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels required in 33 C.F.R. Part 174. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

(4) Vessel registrations and decals are valid for a period of one year, except that the director may extend or diminish vessel registration periods and vessel decals for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period.

(5) Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the fees and taxes described in subsection (2) of this section. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form must be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department, county auditor or other agent, or subagent appointed by the director for transfer of the vessel registration, and the application must be accompanied by a transfer fee as required in RCW 88.02.640(1)((~~h~~)) (1).

Sec. 129. RCW 88.02.560 and 2010 c 161 s 1020 are each amended to read as follows:

(1) An application for a vessel registration must be made by the owner or the owner's authorized representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department. The application must contain:

- (a) The name and address of each owner of the vessel;
- (b) Other information the department may require; and
- (c) The signature of at least one owner.

(2) The application for vessel registration must be accompanied by the:

- (a) Vessel registration fee required under RCW 88.02.640(1)((~~h~~)) (i);
- (b) Derelict vessel and invasive species removal fee under RCW 88.02.640(3)(b) and derelict vessel removal surcharge required under RCW 88.02.640((~~3~~)(~~b~~)) (4);

(c) Filing fee required under RCW 88.02.640(1)((~~h~~)) (e);

(d) License plate technology fee required under RCW 88.02.640(1)((~~e~~)) (f);

(e) License service fee required under RCW 88.02.640(1)((~~f~~)) (g); and

(f) Watercraft excise tax required under chapter 82.49 RCW.

(3) Upon receipt of an application for vessel registration and the required fees and taxes, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal must be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels required in 33 C.F.R. Part 174. A valid decal affixed as prescribed must indicate compliance with the annual registration requirements of this chapter.

(4) Vessel registrations and decals are valid for a period of one year, except that the director may extend or diminish vessel registration periods and vessel decals for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period.

(5) Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the fees and taxes described in subsection (2) of this section. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information must be provided to the department by the state parks and recreation commission in a form ready for distribution. The form must be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department,

the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department, county auditor or other agent, or subagent appointed by the director for transfer of the vessel registration, and the application must be accompanied by a transfer fee as required in RCW 88.02.640(1)((~~h~~)) (l).

Sec. 130. RCW 88.02.590 and 2010 c 161 s 1021 are each amended to read as follows:

(1) A registered owner or the registered owner's authorized representative shall promptly apply for a duplicate registration certificate when a registration certificate is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate registration certificate must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department; and

(c) Be accompanied by the fee required in RCW 88.02.640(1)((~~e~~)) (d), in addition to any other fees or taxes required for the transaction.

(2) A person recovering a registration certificate for which a duplicate has been issued shall promptly return the registration certificate that has been recovered to the department.

Sec. 131. RCW 88.02.595 and 2010 c 161 s 1022 are each amended to read as follows:

(1) A registered owner or the registered owner's authorized representative shall promptly apply for a pair of replacement decals when the decals are lost, stolen, mutilated, or destroyed, or become illegible. The application for replacement decals must:

(a) Be accompanied by an affidavit of loss or destruction;

(b) Include information required by the department;

(c) Be accompanied by the fee required in RCW 88.02.640(1)((~~h~~)) (j), in addition to any other fees or taxes required for the transaction.

(2) A person recovering decals for which a replacement has been issued shall promptly return the decals that have been recovered to the department.

Sec. 132. RCW 88.02.610 and 2010 c 161 s 1026 are each amended to read as follows:

(1) A vessel owner shall apply for a vessel visitor permit if the vessel is:

(a) Currently registered or numbered under the laws of a country other than the United States or has a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94; and

(b) Being used on Washington state waters for the personal use of the owner for more than sixty days.

(2) A vessel visitor permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid as long as the vessel remains currently registered or numbered under the laws of a country other than the United States or the United States customs service cruising license remains valid.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in RCW 88.02.640(1)((~~h~~)) (m) when issuing a vessel visitor permit.

(4) The department shall adopt rules to implement this section, including rules on issuing and displaying the vessel visitor permit.

Sec. 133. RCW 88.02.620 and 2010 c 161 s 1027 are each amended to read as follows:

(1) A vessel owner who is a nonresident natural person shall apply for a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

(a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and

(b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in RCW 88.02.640(1)((~~g~~)) (h) when issuing nonresident vessel permits.

(4) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(5) The department shall adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit.

Sec. 134. RCW 88.02.640 and 2010 c 161 s 1028 are each amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	((Subsections (3) and (4))) <u>Subsection (3) of this section</u>	Subsection (3) of this section
(c) <u>Derelict vessel removal surcharge</u>	<u>\$1.00</u>	<u>Subsection (4) of this section</u>	<u>Subsection (4) of this section</u>
(d) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
((e)) (<u>e</u>) Filing	RCW 46.17.005	RCW 46.17.005	RCW ((46.68.440)) <u>46.68.400</u>
((e)) (<u>f</u>) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW ((46.68.400)) <u>46.68.370</u>
((f)) (<u>g</u>) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220

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((g)) (h) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection ((6)) (5) of this section
((h)) (i) Registration	\$10.50	RCW 88.02.560(2)	((General fund)) RCW 88.02.650
((i)) (j) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
((j)) (k) Title application	\$5.00	RCW 88.02.515	General fund
((k)) (l) Transfer	\$1.00	RCW 88.02.560(7)	General fund
((l)) (m) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	((General fund)) Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) Until June 30, 2012, the derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

- (i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;
- (ii) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667;
- (iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and
- (iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100. ~~((If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollar derelict vessel and invasive species removal fee must be suspended for the following fiscal year.))~~

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

- (a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;
- (b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and
- (c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW ~~((88.02.655))~~ 88.02.650.

- (6) The thirty dollar vessel visitor permit fee must be distributed as follows:
- (a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;
 - (b) The department may keep an amount to cover costs for providing the vessel visitor permit;
 - (c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW ~~((88.02.655))~~ 88.02.650; and
 - (d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

Sec. 135. RCW 88.02.650 and 2010 c 161 s 1029 are each amended to read as follows:

General fees for vessel registrations collected by the director must be deposited in the general fund. Any amount above one million one hundred thousand dollars per fiscal year must be allocated to counties by the state treasurer for boating safety/education and law enforcement programs. Eligibility for boating safety/education and law enforcement program allocations is contingent upon approval of the local boating safety program by the state parks and recreation commission. Fund allocation must be based on the numbers of registered vessels by county of moorage. Each benefitting county is responsible for equitable distribution of such allocation to other jurisdictions with approved boating safety programs within the county. Any fees not allocated to counties due to the absence of an approved boating safety program must be allocated to the state parks and recreation commission for awards to local governments to offset law enforcement and boating safety impacts of boaters recreating in jurisdictions other than where registered. Jurisdictions receiving funds under this section shall deposit the funds into an account dedicated solely for supporting the jurisdiction's boating safety programs. These funds may not replace existing local funds used for boating safety programs.

Sec. 136. 2010 c 161 s 438 (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed:

- (1) RCW 46.16.0105 (Exemption—Vehicles in national recreation areas) and 2005 c 79 s 1;
- (2) RCW 46.16.016 (Emission control inspections—Rules for licensing requirements) and 1979 ex.s. c 163 s 15;
- (3) RCW 46.16.017 (Emission standards—Compliance required to register, lease, rent, or sell vehicles—Exemptions) and 2005 c 295 s 7;
- (4) RCW 46.16.023 (Ride-sharing vehicles—Special plates—Gross misdemeanor) and 2004 c 223 s 2, 1993 c 488 s 5, & 1987 c 175 s 2;
- (5) RCW 46.16.035 (Exemptions—Private school buses) and 1990 c 33 s 584 & 1980 c 88 s 1;
- (6) RCW 46.16.0621 (License fee) and 2003 c 1 s 2, 2002 c 352 s 7, & 2000 1st sp.s. c 1 s 1;
- (7) RCW 46.16.063 (Additional fee for recreational vehicles) and 1996 c 237 s 1 & 1980 c 60 s 2;
- (8) RCW 46.16.071 (Additional fees) and 1996 c 315 s 4;

(9) RCW 46.16.079 (Fixed load motor vehicle equipped for lifting or towing—Capacity fee in addition to and in lieu) and 1986 c 18 s 5, 1975 c 25 s 16, & 1963 c 18 s 1;

(10) RCW 46.16.085 (Commercial trailers, pole trailers—Fee in lieu) and 1991 c 163 s 3, 1989 c 156 s 2, 1987 c 244 s 4, 1986 c 18 s 8, & 1985 c 380 s 16;

(11) RCW 46.16.088 (Transfer of license plates—Penalty) and 1986 c 18 s 9 & 1985 c 380 s 17;

(12) RCW 46.16.111 (Gross weight, how computed) and 1987 c 244 s 5, 1986 c 18 s 11, 1971 ex.s. c 231 s 1, 1969 ex.s. c 170 s 6, & 1967 ex.s. c 83 s 57;

(13) RCW 46.16.121 (Seating capacity fees on stages, for hire vehicles) and 1967 ex.s. c 83 s 58;

(14) RCW 46.16.135 (Monthly license fee—Penalty) and 1986 c 18 s 12, 1985 c 380 s 19, 1979 ex.s. c 136 s 46, 1979 c 134 s 1, 1975-'76 2nd ex.s. c 64 s 3, 1975 1st ex.s. c 118 s 6, 1969 ex.s. c 170 s 7, & 1961 c 12 s 46.16.135;

(15) RCW 46.16.150 (School buses exempt from load and seat capacity fees) and 1961 c 12 s 46.16.150;

(16) RCW 46.16.200 (Applications to agents—Transmittal to director) and 1961 c 12 s 46.16.200;

(17) RCW 46.16.220 (Time of renewal of licenses—Duration) and 1997 c 241 s 9, 1991 c 339 s 20, 1975 1st ex.s. c 118 s 9, 1969 ex.s. c 170 s 9, & 1961 c 12 s 46.16.220;

(18) RCW 46.16.230 (License plates furnished) and 1992 c 7 s 41, 1975 c 25 s 19, & 1961 c 12 s 46.16.230;

(19) RCW 46.16.233 (Standard background—Periodic replacement—Retention of current plate number) and 2003 c 361 s 501, 2003 c 196 s 401, 2000 c 37 s 1, & 1997 c 291 s 2;

(20) RCW 46.16.235 (State name not abbreviated) and 1965 ex.s. c 78 s 2;

(21) RCW 46.16.237 (Reflectorized materials—Fee) and 2005 c 314 s 301, 1987 c 52 s 1, & 1967 ex.s. c 145 s 60;

(22) RCW 46.16.240 (Attachment of plates to vehicles—Violations enumerated) and 2006 c 326 s 1;

(23) RCW 46.16.270 (Replacement of plates—Fee) and 2005 c 314 s 302, 1997 c 291 s 3, 1990 c 250 s 32, & 1987 c 178 s 2;

(24) RCW 46.16.280 (Sale, loss, or destruction of commercial vehicle—Credit for unused fee—Change in license classification) and 1987 c 244 s 7, 1986 c 18 s 17, 1967 c 32 s 20, & 1961 c 12 s 46.16.280;

(25) RCW 46.16.290 (Disposition of license plates, certificate on vehicle transfer) and 2004 c 223 s 3, 1997 c 291 s 4, 1986 c 18 s 18, 1983 c 27 s 2, & 1961 c 12 s 46.16.290;

(26) RCW 46.16.295 (Returned plates—Reuse) and 2003 c 359 s 1;

(27) RCW 46.16.305 (Special license plates—Continuance of earlier issues—Conditions for current issues) and 2008 c 72 s 1;

(28) RCW 46.16.307 (Collectors' vehicles—Use restrictions) and 1996 c 225 s 11;

(29) RCW 46.16.30901 (Professional firefighters and paramedics plate) and 2004 c 35 s 1;

(30) RCW 46.16.30902 (Washington State Council of Firefighters benevolent fund) and 2004 c 35 s 4;

(31) RCW 46.16.30903 (Helping Kids Speak plate) and 2004 c 48 s 1;

- (32) RCW 46.16.30904 ("Helping Kids Speak" account) and 2004 c 48 s 4;
- (33) RCW 46.16.30905 (Law enforcement memorial plate) and 2004 c 221 s 1;
- (34) RCW 46.16.30906 (Law enforcement memorial account) and 2004 c 221 s 4;
- (35) RCW 46.16.30907 (Washington's Wildlife plate collection) and 2005 c 42 s 1;
- (36) RCW 46.16.30908 (Washington's Wildlife license plate collection—Definition) and 2005 c 42 s 2;
- (37) RCW 46.16.30909 (Washington state parks and recreation commission plate) and 2005 c 44 s 1;
- (38) RCW 46.16.30910 (Washington state parks and recreation commission special license plate—Definition) and 2005 c 44 s 2;
- (39) RCW 46.16.30911 ("Washington Lighthouses" plate) and 2005 c 48 s 1;
- (40) RCW 46.16.30912 (Lighthouse environmental programs account) and 2005 c 48 s 4;
- (41) RCW 46.16.30913 ("Keep Kids Safe" plate) and 2005 c 53 s 1;
- (42) RCW 46.16.30914 ("We love our pets" plate) and 2005 c 71 s 1;
- (43) RCW 46.16.30915 (We love our pets account) and 2005 c 71 s 4;
- (44) RCW 46.16.30916 (Gonzaga University alumni association plate) and 2005 c 85 s 1;
- (45) RCW 46.16.30917 (Gonzaga University alumni association account) and 2005 c 85 s 4;
- (46) RCW 46.16.30918 ("Washington's National Park Fund" plate) and 2005 c 177 s 1;
- (47) RCW 46.16.30919 ("Washington's National Park Fund" account) and 2005 c 177 s 4;
- (48) RCW 46.16.30920 (Armed forces plate collection) and 2008 c 183 s 1 & 2005 c 216 s 1;
- (49) RCW 46.16.30921 (Armed forces license plate collection—Definition—No free issuance) and 2008 c 183 s 2 & 2005 c 216 s 2;
- (50) RCW 46.16.30923 ("Ski & Ride Washington" account) and 2005 c 220 s 4;
- (51) RCW 46.16.30924 (Wild On Washington plate) and 2005 c 224 s 1;
- (52) RCW 46.16.30925 (Wild On Washington license plates—Definition) and 2005 c 224 s 2;
- (53) RCW 46.16.30926 (Endangered Wildlife plate) and 2005 c 225 s 1;
- (54) RCW 46.16.30927 (Endangered Wildlife license plates—Definition) and 2005 c 225 s 2;
- (55) RCW 46.16.30928 ("Share the Road" plate) and 2005 c 426 s 1;
- (56) RCW 46.16.30929 ("Share the Road" account) and 2005 c 426 s 4;
- (57) RCW 46.16.313 (Special license plates—Fees) and 2005 c 426 s 3, 2005 c 225 s 3, 2005 c 224 s 3, 2005 c 220 s 3, 2005 c 216 s 3, 2005 c 177 s 3, 2005 c 85 s 3, 2005 c 71 s 3, 2005 c 53 s 3, 2005 c 48 s 3, 2005 c 44 s 3, & 2005 c 42 s 3;
- (58) RCW 46.16.316 (Special license plates—Transfer of vehicle—Replacement plates) and 2005 c 210 s 2;

(59) RCW 46.16.333 (Cooper Jones emblems) and 2005 c 426 s 5 & 2002 c 264 s 3;

~~((60))~~ ~~(RCW 46.16.335 (Special license plates and emblems—Rules) and 1990 c 250 s 10;~~

~~((61))~~ RCW 46.16.340 (Amateur radio operator plates—Information furnished to various agencies) and 1995 c 391 s 8, 1986 c 266 s 49, 1985 c 7 s 112, 1974 ex.s. c 171 s 43, 1967 c 32 s 23, & 1961 c 12 s 46.16.340;

~~((62))~~ (61) RCW 46.16.350 (Amateur radio operator plates—Expiration or revocation of radio license—Penalty) and 1997 c 291 s 11, 1990 c 250 s 11, 1979 ex.s. c 136 s 49, 1967 c 32 s 24, & 1961 c 12 s 46.16.350;

~~((63))~~ (62) RCW 46.16.371 (Special plates for honorary consul, foreign government representative) and 1987 c 237 s 1;

~~((64))~~ (63) RCW 46.16.374 (Taipei Economic and Cultural Office—Special plates) and 2001 c 64 s 5 & 1996 c 139 s 1;

~~((65))~~ (64) RCW 46.16.376 (Taipei Economic and Cultural Office—Fee exemption) and 1996 c 139 s 2;

~~((66))~~ (65) RCW 46.16.381 (Special parking for persons with disabilities—Penalties—Enforcement—Definition) and 2007 c 262 s 1, 2007 c 44 s 1, 2006 c 357 s 2, 2005 c 390 s 2, 2004 c 222 s 2, 2003 c 371 s 1, 2002 c 175 s 33, 2001 c 67 s 1, 1999 c 136 s 1, 1998 c 294 s 1, 1995 c 384 s 1, 1994 c 194 s 6, 1993 c 106 s 1, 1992 c 148 s 1, 1991 c 339 s 21, 1990 c 24 s 1, 1986 c 96 s 1, & 1984 c 154 s 2;

~~((67))~~ (66) RCW 46.16.385 (Versions of special plates for persons with disabilities) and 2005 c 390 s 3, 2005 c 210 s 3, & 2004 c 222 s 1;

~~((68))~~ (67) RCW 46.16.470 (Temporary license—Display) and 1967 c 202 s 5;

~~((69))~~ (68) RCW 46.16.480 (Nonresident members of armed forces—Exemption from sales, use, or motor vehicle excise taxes—Extent of exemption) and 1967 c 202 s 6;

~~((70))~~ (69) RCW 46.16.490 (Nonresident members of armed forces—Rules and regulations—Proof) and 1979 c 158 s 142 & 1967 c 202 s 7;

~~((71))~~ (70) RCW 46.16.505 (Campers—License and plates—Application—Fee) and 1975 1st ex.s. c 118 s 11, 1975 c 41 s 1, & 1971 ex.s. c 231 s 7;

~~((72))~~ (71) RCW 46.16.560 (Personalized license plates—Defined) and 1975 c 59 s 1 & 1973 1st ex.s. c 200 s 2;

~~((73))~~ (72) RCW 46.16.565 (Personalized license plates—Application) and 1985 c 173 s 1, 1983 c 27 s 4, 1975 c 59 s 2, & 1973 1st ex.s. c 200 s 3;

~~((74))~~ (73) RCW 46.16.570 (Personalized license plates—Design) and 2005 c 210 s 4, 1986 c 108 s 1, 1983 1st ex.s. c 24 s 1, 1975 c 59 s 3, & 1973 1st ex.s. c 200 s 4;

~~((75))~~ (74) RCW 46.16.575 (Personalized license plates—Issuance to registered owner only) and 1973 1st ex.s. c 200 s 5;

~~((76))~~ (75) RCW 46.16.580 (Personalized license plates—Application requirements) and 1973 1st ex.s. c 200 s 6;

~~((77))~~ (76) RCW 46.16.585 (Personalized license plates—Fees—Renewal—Penalty) and 1979 ex.s. c 136 s 51, 1975 c 59 s 4, & 1973 1st ex.s. c 200 s 7;

~~((78))~~ (77) RCW 46.16.590 (Personalized license plates—Transfer fees) and 2004 c 223 s 5, 1975 c 59 s 5, & 1973 1st ex.s. c 200 s 8;

~~((79))~~ (78) RCW 46.16.595 (Personalized license plates—Transfer or surrender upon sale or release of vehicle—Penalty) and 1979 ex.s. c 136 s 52, 1975 c 59 s 6, & 1973 1st ex.s. c 200 s 9;

~~((80))~~ (79) RCW 46.16.600 (Personalized license plates—Rules and regulations) and 2005 c 210 s 5, 1979 c 158 s 143, & 1973 1st ex.s. c 200 s 10;

~~((81))~~ (80) RCW 46.16.601 (Personalized special plates) and 2005 c 210 s 1;

~~((82))~~ (81) RCW 46.16.605 (Personalized license plates—Disposition of fees—Costs) and 1988 c 36 s 27, 1983 1st ex.s. c 24 s 2, 1983 c 3 s 118, 1979 c 158 s 144, & 1973 1st ex.s. c 200 s 11;

~~((83))~~ (82) RCW 46.16.606 (Personalized license plates—Additional fee) and 2007 c 246 s 2 & 1991 sp.s. c 7 s 13;

~~((84))~~ (83) RCW 46.16.630 (Moped registration) and 2002 c 352 s 9, 1997 c 241 s 11, & 1979 ex.s. c 213 s 5;

~~((85))~~ (84) RCW 46.16.640 (Wheelchair conveyances) and 1983 c 200 s 2;

~~((86))~~ (85) RCW 46.16.670 (Boat trailers—Fee for freshwater aquatic weeds account) and 1991 c 302 s 3;

~~((87))~~ (86) RCW 46.16.680 (Kit vehicles) and 2009 c 284 s 2 & 1996 c 225 s 10;

~~((88))~~ (87) RCW 46.17.010 (Vehicle weight fee—Motor vehicles, except motor homes) and 2006 c 337 s 9 & 2005 c 314 s 201; and

~~((89))~~ (88) RCW 46.17.020 (Vehicle weight fee—Motor homes) and 2005 c 314 s 202.

NEW SECTION. Sec. 137. The following acts or parts of acts are each repealed:

(1) RCW 46.04.1961 (Helping kids speak license plates) and 2010 c 161 s 119;

(2) RCW 46.04.7051 (We love our pets license plates) and 2010 c 161 s 160;

(3) RCW 46.10.405 (Registration—Valid before transfer) and 2010 c 161 s 230, 1982 c 17 s 3, 1979 ex.s. c 182 s 6, & 1975 1st ex.s. c 181 s 4;

(4) RCW 46.16.30922 ("Ski & Ride Washington" plate) and 2010 1st sp.s. c 7 s 109 & 2005 c 220 s 1;

(5) RCW 46.18.030 (Authority to continue) and 2003 c 196 s 501 & 1997 c 291 s 9; and

(6) RCW 88.02.655 (Allocation of funds under RCW 88.02.650 to counties—Deposit to account for boating safety programs) and 2010 c 161 s 1030 & 1993 c 244 s 40.

NEW SECTION. Sec. 138. RCW 46.04.391 is recodified as RCW 46.04.4141.

NEW SECTION. Sec. 139. RCW 46.16.900 is recodified as RCW 46.16A.900.

NEW SECTION. Sec. 140. Section 128 of this act expires June 30, 2012.

NEW SECTION. Sec. 141. Section 129 of this act takes effect June 30, 2012.

NEW SECTION. Sec. 142. Except for section 129 of this act, 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 July 1, 2011.

Passed by the Senate April 14, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 172

[Substitute Senate Bill 5065]

ANIMAL CRUELTY

AN ACT Relating to prevention of animal cruelty; amending RCW 16.52.011, 16.52.015, 16.52.085, 16.52.200, and 16.52.207; and prescribing penalties.

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

Sec. 1. RCW 16.52.011 and 2009 c 287 s 1 are each amended to read as follows:

(1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in ~~((f))~~ (g) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Food" means food or feed appropriate to the species for which it is intended.

(g) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

~~((g))~~ (h) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

~~((h))~~ (i) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal.

~~((i))~~ (j) "Necessary water" means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal.

(k) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

~~((j))~~ (l) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

~~((k))~~ (m) "Similar animal" means ~~((an animal classified in the same genus))~~: (i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class.

~~((l))~~ (n) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110.

Sec. 2. RCW 16.52.015 and 2003 c 53 s 110 are each amended to read as follows:

(1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for civil infractions and misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 through 9.08.078 or ~~((81.56.120))~~ 81.48.070;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or ~~((81.56.120))~~ 81.48.070. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to

investigate violations of this chapter or RCW 9.08.070 or ~~((81.56.120)) 81.48.070~~, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or ~~((81.56.120)) 81.48.070~~, a law enforcement agency officer may arrest the alleged offender.

Sec. 3. RCW 16.52.085 and 2009 c 287 s 2 are each amended to read as follows:

(1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter or ~~((owns or possesses)) a person owns, cares for, or resides with~~ an animal in violation of an order issued under RCW 16.52.200~~((3))~~ (4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning ~~((or possessing))~~, caring for, or residing with a similar animal under RCW 16.52.200~~((3))~~ (4), the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action.

Sec. 4. RCW 16.52.200 and 2009 c 287 s 3 are each amended to read as follows:

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. ~~((If forfeiture is ordered, the owner))~~

(4) Any person convicted of animal cruelty shall be prohibited from owning ~~((or))~~, caring for, or residing with any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection ~~((4))~~ (5) of this section.

~~((4))~~ (5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

(a) The person's prior animal cruelty in the second degree convictions;

(b) The type of harm or violence inflicted upon the animals;

(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions; ~~((and))~~

(d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and

(e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

~~((5))~~ (6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

~~((6))~~ (7) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

~~((7))~~ (8) If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person:

(a) Shall pay a civil penalty of one thousand dollars for the first violation;

(b) Shall pay a civil penalty of two thousand five hundred dollars for the second violation; and

(c) Is guilty of a gross misdemeanor for the third and each subsequent violation.

(9) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.

Sec. 5. RCW 16.52.207 and 2007 c 376 s 1 are each amended to read as follows:

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

~~(3)((a))~~ Animal cruelty in the second degree ((under subsection (1), (2)(a), or (2)(b) of this section)) is a gross misdemeanor.

~~((b) Animal cruelty in the second degree under subsection (2)(c) of this section is a gross misdemeanor.))~~

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.

Passed by the Senate April 14, 2011.

Passed by the House April 4, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 173

[Engrossed Substitute Senate Bill 5098]

PUBLIC INSPECTION AND COPYING—EXEMPTION—PERSONAL INFORMATION

AN ACT Relating to exempting personal information from public inspection and copying; and amending RCW 42.56.230.

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

Sec. 1. RCW 42.56.230 and 2010 c 106 s 102 are each amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation.

(3) 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;

~~((3))~~ (4) 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: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

~~((4))~~ (5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

~~((5))~~ (6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

~~((6))~~ (7) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identocard.

Passed by the Senate April 14, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 174

[Substitute Senate Bill 5167]

TAXES—TECHNICAL CHANGES—CAR RENTAL TAXES

AN ACT Relating to tax statute clarifications and technical corrections, including for the purposes of local rental car taxes; amending RCW 82.04.290, 82.04.645, 82.08.0297, 82.12.0297, 84.36.381, 84.36.385, 82.14.049, 35.102.150, 82.04.460, 82.08.806, 82.08.820, 82.08.820, 82.32.665, and 82.32.117; amending 2010 1st sp.s. c 23 s 101 (uncodified); reenacting and amending RCW 82.04.050 and 82.32.330; reenacting RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.022, 82.12.805, and 82.32.590; creating a new section; repealing RCW 82.32.115; providing an effective date; and providing an expiration date.

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

PART I MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS

Sec. 101. RCW 82.04.290 and 2008 c 81 s 6 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)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) 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.

(b) This subsection (2) 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.

(3)(a) Until July 1, 2024, upon every person engaging within this state in the business of performing aerospace product development for others, as to such

persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) "Aerospace product development" has the meaning as provided in RCW 82.04.4461.

Sec. 102. RCW 82.04.645 and 2010 1st sp.s. c 23 s 110 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a financial institution from an affiliated person if the amounts are received from transactions that are required to be at arm's length under sections 23A or 23B of the federal reserve act as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. For purposes of this subsection, "financial institution" has the same meaning as in RCW 82.04.080.

(2) As used in this section, "affiliated" means under common control. "~~(Common)~~ Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

Sec. 103. RCW 82.08.0297 and 1998 c 79 s 18 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales of eligible foods ~~((which))~~ that are purchased with ~~((coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically))~~ benefits under the supplemental nutrition assistance program or successor program, notwithstanding anything to the contrary in RCW 82.08.0293.

(2) 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))~~ benefits under the supplemental nutrition assistance program or successor program and cash, check, or similar payment, the cash, check, or similar payment ~~((shall))~~ must be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

(3) As used in this section~~(;):~~:

(a) "Eligible foods" ~~((shall have the same meaning as that established under federal law for purposes of the food stamp act of 1977))~~ means foods that are eligible for purchase with benefits under the supplemental nutrition assistance program or successor program.

(b) "Supplemental nutrition assistance program" refers to a food assistance program that is administered, at the federal level, by the United States department of agriculture, and was formerly known as the food stamp program.

Sec. 104. RCW 82.12.0297 and 1998 c 79 s 19 are each amended to read as follows:

(1) The provisions of this chapter ~~((shall))~~ do not apply with respect to the use of eligible foods ~~((which))~~ that are purchased with ~~((coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically))~~ benefits under the supplemental nutrition assistance program or successor program, 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.))~~
(2) The definitions in RCW 82.08.0297 apply to this section.

Sec. 105. RCW 84.36.381 and 2010 c 106 s 306 are each amended to read as follows:

A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, boarding home, or adult family home does not disqualify the claim of exemption if:

- (a) The residence is temporarily unoccupied;
- (b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or
- (c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

~~((a))~~ (3) ~~((a))~~ The person claiming the exemption must be ~~((a))~~;
 (i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability~~((:))~~; or

~~((b))~~ (ii) A veteran of the armed forces of the United States ~~((with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005, or such subsequent date as the department may provide by rule consistent with the purpose of this section))~~ entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

~~(b)~~ However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person

must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less is exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

Sec. 106. RCW 84.36.385 and 2010 c 106 s 308 are each amended to read as follows:

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, may be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as

prescribed and furnished by the department of revenue. However, an exemption from tax under RCW 84.36.381 continues for no more than six years unless a renewal application is filed as provided in subsection (3) of this section. ~~((The county assessor may also require, by written notice, a renewal application following an amendment of the income requirements set forth in RCW 84.36.381. Renewal applications must be on forms prescribed and furnished by the department of revenue.))~~

(2) A person granted an exemption under RCW 84.36.381 must inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, must file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application. Renewal applications must be on forms prescribed and furnished by the department of revenue.

(4) ~~((Beginning in 1992 and in each of the three succeeding years,))~~ At least once every six years, the county assessor must notify ~~((approximately one fourth of))~~ those persons ~~((exempt))~~ receiving an exemption from taxes under RCW 84.36.381 ~~((in the current year who have not filed a renewal application within the previous four years,))~~ of the requirement to file a renewal application. The county assessor may also require a renewal application following an amendment of the income requirements set forth in RCW 84.36.381.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption must be denied but such denial is subject to appeal under the provisions of RCW 84.48.010 and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on erroneous information, the taxes must be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed five years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information must be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Sec. 107. RCW 82.14.049 and 2008 c 264 s 4 are each amended to read as follows:

(1) The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax ~~((shall be))~~ is one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax ~~((shall))~~ may not be used to subsidize any professional sports team and ~~((shall))~~ must be used solely for the following purposes:

~~((+))~~ (a) Acquiring, constructing, maintaining, or operating public sports stadium facilities;

~~((2))~~ (b) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities;

~~((3))~~ (c) Youth or amateur sport activities or facilities; or

~~((4))~~ (d) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

~~(At least seventy-five percent of the tax imposed under this section shall be used for the purposes of subsections (1), (2), and (4) of this section.)~~ (2) In a county of one million or more, at least seventy-five percent of the tax imposed under this section ~~(shall)~~ **must** be used to retire the debt on the stadium under RCW 67.28.180(2)(b)(ii), until that debt is fully retired.

PART II UPDATING STATUTORY REFERENCES

Sec. 201. RCW 35.102.150 and 2010 1st sp.s. c 23 s 519 are each amended to read as follows:

Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax must allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines are those activities to which the tax rates in RCW 82.04.260(13) and 82.04.280(1)(a) apply.

Sec. 202. RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and 2010 c 106 s 202 are each reenacted and amended to read as follows:

(1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280 (1)(~~(2)~~, and ~~(7)~~) (a), (b), and (g), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property,

and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software

into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

- (i) Custom software; or
- (ii) The customization of prewritten computer software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section.

Sec. 203. RCW 82.04.460 and 2010 1st sp.s. c 23 s 108 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person earning apportionable income taxable under this chapter and also taxable in another state((s)) must, for the purpose of computing tax liability under this chapter, apportion to this state, in accordance with RCW 82.04.462, that portion of the person's apportionable income derived from business activities performed within this state.

(2) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under RCW 82.04.290. The rule adopted by the department must, to the extent feasible, be consistent with the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, except that:

(a) The department's rule must provide for a single factor apportionment method based on the receipts factor; and

(b) The definition of "financial institution" contained in appendix A to the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions is advisory only.

(3) The department may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

(i) RCW 82.04.255;

(ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

(iii) RCW 82.04.280(~~(5))~~ (1)(e);

(iv) RCW 82.04.285;

(v) RCW 82.04.286;

(vi) RCW 82.04.290;

(vii) RCW 82.04.2907;

(viii) RCW 82.04.2908;

(ix) RCW 82.04.263, but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (4) if the tax classification in RCW 82.04.263 did not exist; and

(x) RCW 82.04.260(13) and 82.04.280(1)(a), but only with respect to advertising.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in RCW 82.04.067(1).

(ii) For purposes of this subsection (4)(b), "business activities tax" and "state" have the same meaning as in RCW 82.04.462.

Sec. 204. RCW 82.08.806 and 2010 1st sp.s. c 23 s 516 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260(13) or 82.04.280(1)(a).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes.

Sec. 205. RCW 82.08.820 and 2006 c 354 s 11 are each amended to read as follows:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Cold storage warehouse" has the meaning provided in RCW 82.74.010;

(c) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least twenty-five thousand square feet of additional space to an existing cold storage warehouse, at least two hundred thousand square feet of additional space to an existing warehouse other than a cold storage warehouse, or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(d) "Department" means the department of revenue;

(e) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(f) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(g) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(h) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers,

pallets, and other containers and storage devices that form a necessary part of the storage system;

(i) "Person" has the meaning given in RCW 82.04.030;

(j) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(k) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(l) "Third-party warehouse" means a person taxable under RCW 82.04.280(~~(4)~~) (1)(d);

(m) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(n) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the

department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments.

Sec. 206. RCW 82.08.820 and 2006 c 354 s 12 are each amended to read as follows:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished

goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(~~(4)~~) (1)(d);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax

paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments.

Sec. 207. RCW 82.32.665 and 2010 1st sp.s. c 23 s 204 are each amended to read as follows:

There is hereby created a joint tax avoidance review committee which is a bipartisan committee consisting of three members of the senate, two from the majority caucus and one from the minority caucus, and three members of the house of representatives, two from the majority caucus and one from the minority caucus. The senate members of the committee must be appointed by the majority leader of the senate, and the house members of the committee must be appointed by the speaker of the house. The appointing authorities must also appoint one alternate member from each of the two largest caucuses of each legislative chamber.

(1)(a) Members and alternates must be appointed as soon as possible after May 1, 2010, and their terms continue until such persons no longer wish to serve on the committee or no longer serve in the legislature, whichever occurs first.

(b) A vacancy must be filled by the appointment of a legislator from the same legislative chamber and caucus as the original appointment. The

appropriate appointing authority must make the appointment within thirty days of the vacancy occurring. Former committee members and alternates may be reappointed to the committee.

(2) The committee must choose its chair and vice-chair from among its membership. The committee meets at the call of the chair. The chair of the committee must cause all meeting notices and committee documents to be sent to the committee members and alternates.

(3) Staff support for the committee must be provided by the senate committee services and the house of representatives office of program research.

(4) The committee must:

(a) Generally monitor the department's implementation of Part II, chapter 23, Laws of 2010 1st sp. sess., providing timely advice to the department in any rule making undertaken pursuant to the authority granted under RCW 82.32.655;

(b) Seek input from stakeholders and other legislators as the committee may determine is desirable and useful in the furtherance of its mission herein described;

(c) Review other cases, identified by the department, of tax avoidance transactions not described in RCW 82.32.655 that may represent examples of arrangements that circumvent the policies of this state and thus unfairly avoid taxes;

(d) Consider the need for an explicit statutory construction standard to provide direction to the courts on the interpretation of Part II, chapter 23, Laws of 2010 1st sp. sess.; and

(e) Provide a report to the fiscal committees of the house of representatives and senate by December 31, 2010, which must include:

(i) Recommended legislation on any matters that the committee deems advisable, including amendments to RCW 82.32.090, 82.32.655, and 82.32.660; and

(ii) Recommendations for future legislative oversight of the department's implementation of RCW 82.32.090, 82.32.655, and 82.32.660.

(5) For the purposes of this section, the disclosure of otherwise confidential tax information to the members of the committee is deemed to fall within the exception provided by RCW 82.32.330(3)(~~(d)~~) (e).

(6) This section expires July 1, 2011.

Sec. 208. 2010 1st sp.s. c 23 s 101 (uncodified) is amended to read as follows:

(1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income for state business and occupation tax purposes.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280 ~~((2), (4), (6), and (7))~~ (1)(b), (d), (f), and (g), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

(d) Nothing in this part is intended to modify the nexus and apportionment requirements for local gross receipts business and occupation taxes.

PART III MERGING MULTIPLE AMENDMENTS TO STATUTES FROM 2010 LEGISLATION

Sec. 301. RCW 82.04.2909 and 2010 1st sp.s. c 2 s 1 and 2010 c 114 s 108 are each reenacted to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) This section expires January 1, 2017.

Sec. 302. RCW 82.04.4481 and 2010 1st sp.s. c 2 s 2 and 2010 c 114 s 118 are each reenacted to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct

service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2017 and thereafter.

(4) A person claiming the credit provided in this section must file a complete annual report with the department under RCW 82.32.534.

Sec. 303. RCW 82.08.805 and 2010 1st sp.s. c 2 s 3 and 2010 c 114 s 122 are each reenacted to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2017.

Sec. 304. RCW 82.12.022 and 2010 1st sp.s. c 2 s 5 and 2010 c 114 s 127 are each reenacted to read as follows:

(1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax

under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2017.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under RCW 82.32.534.

(6) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax imposed in this section must be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

Sec. 305. RCW 82.12.805 and 2010 1st sp.s. c 2 s 4 and 2010 c 114 s 128 are each reenacted to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2017.

Sec. 306. RCW 82.32.590 and 2010 c 137 s 1 and 2010 c 114 s 135 are each reenacted to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.32.585 or annual report under RCW 82.32.534 by the due date was the result of circumstances beyond the control of the taxpayer, the

department must extend the time for filing the survey or report. The extension is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual report or annual survey required under subsection (1) of this section by the due date of the report or survey is entitled to an extension of the due date. A request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual reports and surveys, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports and surveys due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual report or survey.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3).

PART IV COMBINING TWO SUBPOENA STATUTES INTO A SINGLE SUBPOENA STATUTE

Sec. 401. RCW 82.32.117 and 2010 c 22 s 4 are each amended to read as follows:

(1) The department or its duly authorized agent may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(a) State that an order is sought pursuant to this subsection;

(b) Adequately specify the records, documents, or testimony; and

(c) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

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

(3) The department or its duly authorized agent may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) The department may not disclose any return or tax information, as defined in RCW 82.32.330, obtained in response to a subpoena issued under this section, except as authorized in RCW 82.32.330.

(6) A third party may not be held civilly liable for any harm resulting from that person's compliance with a subpoena issued under the authority of this section.

(7) The entire court file of any proceeding instituted under this section must be sealed and is not open to public inspection by any person except upon order of the court as authorized by law.

NEW SECTION. Sec. 402. RCW 82.32.115 (Records in possession of a third party—Subpoenas) and 2009 c 309 s 1 are each repealed.

NEW SECTION. Sec. 403. The repeal in section 402 of this act does not affect any existing right acquired or liability or obligation incurred under the statute repealed or under any rule or order adopted under that statute nor does it affect any proceedings instituted under it.

Sec. 404. RCW 82.32.330 and 2010 c 112 s 13 and 2010 c 106 s 104 are each reenacted and 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. However, 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 requires 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 are 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) This section does 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 this title or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes 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. However, tax information not received from the taxpayer must 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 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 is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(e) 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;

(f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(g) 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;

(h) 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;

(i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) 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, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(l) 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 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information

pertaining to the specific business of the taxpayer to which the person has succeeded;

(p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted;

(r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW (~~(82.32.115)~~) 82.32.117;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers; or

(u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.

(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 must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must 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 must 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 must 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) Service of a subpoena issued under RCW (~~(82.32.115)~~) 82.32.117 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW (~~(82.32.115)~~) 82.32.117 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) 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) (e), (f), (g), (h), (i), or (m) 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 must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

PART V MISCELLANEOUS

NEW SECTION. Sec. 501. Section 206 of this act takes effect July 1, 2012.

NEW SECTION. Sec. 502. Section 205 of this act expires July 1, 2012.

Passed by the Senate March 23, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 175

[Senate Bill 5278]

INDUSTRIAL INSURANCE—RATE NOTICES

AN ACT Relating to information contained in rate notices under the industrial insurance laws; and amending RCW 51.16.105.

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

Sec. 1. RCW 51.16.105 and 1994 c 164 s 26 are each amended to read as follows:

(1) All department expenses relating to industrial safety and health services of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title.

(2) The department shall include in all rate notices sent to state fund and self-insured employers an accounting that clearly identifies all programs and services that are financed in whole or in part by state fund premiums or self-insurers' administrative assessments.

Passed by the Senate March 2, 2011.

Passed by the House April 12, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 176

[Senate Bill 5367]

ECONOMIC DEVELOPMENT FINANCE AUTHORITY—BOND ISSUANCE

AN ACT Relating to authorizing the economic development finance authority to continue issuing bonds; and amending RCW 43.163.130.

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

Sec. 1. RCW 43.163.130 and 2005 c 137 s 1 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~~) must 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~~) must 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~~) is 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~~) must be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A 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~~) determines. The bonds (~~shall~~) must 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~~) is 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~~) may not exceed one billion five hundred million dollars in total outstanding debt at any time.

(11) The state finance committee (~~shall~~) must 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.

Passed by the Senate March 7, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 177

[Senate Bill 5389]

EARLY LEARNING ADVISORY COUNCIL—MEMBERSHIP

AN ACT Relating to the membership of the early learning advisory council; reenacting and amending RCW 43.215.090; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that to fully comply with requirements in section 642B of the federal head start act, 42 U.S.C. Sec. 9837b, regarding state advisory council membership, Washington must amend existing law to reflect necessary changes in early learning advisory council membership in accordance with the federal requirement.

Accordingly, the purpose of this act is to specify four of the governor's appointees as permanent members on the early learning advisory council to comply with state advisory council requirements as follows: The head start state collaboration office director or a designee; a representative of a head start, early head start, migrant/seasonal head start, or tribal head start program; a representative of a local education agency; and a representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act. This act also revises the categories of groups from which the governor may appoint additional representatives as members of the council.

Sec. 2. RCW 43.215.090 and 2010 c 234 s 3 and 2010 c 12 s 1 are each reenacted and amended to read as follows:

(1) The early learning advisory council is established to advise the department on statewide early learning issues that would build a comprehensive system of quality early learning programs and services for Washington's children and families by assessing needs and the availability of services, aligning resources, developing plans for data collection and professional development of early childhood educators, and establishing key performance measures.

(2) The council shall work in conjunction with the department to develop a statewide early learning plan that guides the department in promoting alignment of private and public sector actions, objectives, and resources, and ensuring school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of not more than twenty-three members, as follows:

(a) The governor shall appoint at least one representative from each of the following: The department, the office of financial management, the department of social and health services, the department of health, the higher education coordinating board, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint seven leaders in early childhood education, with at least one representative with experience or expertise in ~~((each))~~ one or more of the areas such as the following: ~~((Children with disabilities,))~~ The K-12 system, family day care providers, and child care centers with four of the seven governor's appointees made as follows:

(i) The head start state collaboration office director or the director's designee;

(ii) A representative of a head start, early head start, migrant/seasonal head start, or tribal head start program;

(iii) A representative of a local education agency; and

(iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;

(d) Two members of the house of representatives, one from each caucus, and two members of the senate, one from each caucus, to be appointed by the speaker of the house of representatives and the president of the senate, respectively;

(e) Two parents, one of whom serves on the department's parent advisory ~~((council))~~ group, to be appointed by the governor;

(f) One representative of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

(g) One representative designated by sovereign tribal governments; and

(h) One representative from the Washington federation of independent schools.

(6) The council shall be cochaired by one representative of a state agency and one nongovernmental member, to be elected by the council for two-year terms.

(7) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical working group created in section 2, chapter 234, Laws of 2010.

(8) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(9) The department shall provide staff support to the council.

Passed by the Senate March 1, 2011.
Passed by the House April 11, 2011.
Approved by the Governor April 27, 2011.
Filed in Office of Secretary of State April 27, 2011.

CHAPTER 178

[Senate Bill 5480]

PHYSICIANS AND PHYSICIAN ASSISTANTS—LICENSE RENEWAL REQUIREMENTS

AN ACT Relating to physician and physician assistants license renewal requirements; amending RCW 18.71A.020; and reenacting and amending RCW 18.71.080.

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

Sec. 1. RCW 18.71.080 and 2009 c 492 s 5 and 2009 c 403 s 2 are each reenacted and amended to read as follows:

(1)(a) Every person licensed to practice medicine in this state shall pay licensing fees and renew his or her license in accordance with administrative procedures and administrative requirements adopted as provided in RCW 43.70.250 and 43.70.280.

(b) The commission shall request licensees to submit information about their current professional practice at the time of license renewal. This information may include practice setting, medical specialty, board certification, or other relevant data determined by the commission.

(c) A physician who resides and practices in Washington and obtains or renews a retired active license shall be exempt from licensing fees imposed under this section. The commission may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. The number of hours of continuing education for a physician holding a retired active license shall not exceed fifty hours per year.

(2) The office of crime victims advocacy shall supply the commission with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The commission shall disseminate this information to licensees by: Providing the information on the commission's web site; including the information in newsletters; holding trainings at meetings attended by organization members; or ~~((through))~~ another distribution method determined by the commission. The commission shall report to the office of crime victims advocacy on the method or methods it uses to distribute information under this subsection.

(3) The commission, in its sole discretion, may permit an applicant who has not renewed his or her license to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine.

Sec. 2. RCW 18.71A.020 and 2009 c 98 s 2 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 within one year successfully take and pass an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of medical examiners, or the medical quality assurance commission as of July 1, 1999, 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 fifty 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)(a) 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.

(b) The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission shall request licensees to submit information about their current professional practice at the time of license renewal. This information may include practice setting, medical specialty, or other relevant data determined by the commission.

(c) The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(5) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit.

Passed by the Senate February 18, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 179

[Senate Bill 5526]

STIRLING CONVERTERS—INCENTIVES

AN ACT Relating to incentives for stirling converters; amending RCW 82.04.294; and reenacting and amending RCW 82.16.110 and 82.16.120.

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

Sec. 1. RCW 82.04.294 and 2010 c 114 s 109 are each amended to read as follows:

~~(1)((a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.2904 percent.~~

~~(b) Beginning October 1, 2009,))~~ Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

~~(2)((a) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules and manufactured by the seller, or of solar grade silicon manufactured by the seller to be used exclusively in components of such systems; as to such persons the amount of tax with respect to the business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.~~

~~(b) Beginning October 1, 2009,))~~ Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with

respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) ~~((Beginning October 1, 2009,))~~ Silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(6) This section expires June 30, 2014.

Sec. 2. RCW 82.16.110 and 2010 c 202 s 1 and 2010 c 106 s 225 are each reenacted and amended to read as follows:

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

(1) "Administrator" means an owner and assignee of a community solar project as defined in subsection (2)(a)(i) of this section that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary, such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to the other owners.

(2)(a) "Community solar project" means:

(i) A solar energy system that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit

organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business;

(ii) A utility-owned solar energy system that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project; or

(iii) A solar energy system, placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive for the same customer-generated electricity as provided in RCW 82.16.120.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Company" means an entity that is:

(A)(I) A limited liability company;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW;

and

(B) Not a "utility" as defined in this subsection (2)(b); and

(ii) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(iii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(3) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington and installed on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for utility-owned community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(4) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(5) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(6) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(7) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(8) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(9) "Solar inverter" means the device used to convert direct current to alternating current in a ~~((photovoltaic cell))~~ solar energy system.

(10) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(11) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

Sec. 3. RCW 82.16.120 and 2010 c 202 s 2 and 2010 c 106 s 103 are each reenacted and amended to read as follows:

(1)(a) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system.

(b) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(i), the administrator must apply for the investment cost recovery incentive on behalf of each of the other owners.

(c) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(iii), the company owning the community solar project must apply for the investment cost recovery incentive on behalf of each member of the company.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the certification must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the certification must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state; ~~((or))~~

(E) A stirling converter manufactured in Washington state; or

- (F) Solar or wind equipment manufactured outside of Washington state;
- (iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems; and
- (v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(l).

(3)(a) By August 1st of each year application for the incentive must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the application must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the application must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section; and

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(l).

(c)(i) Persons, administrators of community solar projects, and companies receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and must add thereto interest on the amount. Interest is assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state or a solar stirling converter manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5)(a) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year.

(b) Except as provided in (c) through (e) of this subsection (5), each applicant in a community solar project is eligible for up to five thousand dollars per year.

(c) Where the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible for an incentive but only in proportion to the ownership share of the project, up to five thousand dollars per year.

(d) Where the applicant is a company owning a community solar project that has applied for an investment cost recovery incentive on behalf of its members, each member of the company is eligible for an incentive that would otherwise belong to the company but only in proportion to each ownership share of the company, up to five thousand dollars per year. The company itself is not eligible for incentives under this section.

(e) In the case of a utility-owned community solar project, each ratepayer that contributes to the project is eligible for an incentive in proportion to the contribution, up to five thousand dollars per year.

(6) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(7) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(8) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

(9) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, 2020.

Passed by the Senate March 2, 2011.

Passed by the House April 9, 2011.

Approved by the Governor April 27, 2011.

Filed in Office of Secretary of State April 27, 2011.

CHAPTER 180

[Engrossed Second Substitute Senate Bill 5769]

COAL-FIRED ELECTRIC GENERATION FACILITIES

AN ACT Relating to coal-fired electric generation facilities; amending RCW 80.80.040, 80.80.070, 80.50.100, 43.160.076, and 19.280.030; reenacting and amending RCW 80.80.010 and 80.80.060; adding new sections to chapter 80.80 RCW; adding a new section to chapter 43.155 RCW; adding new sections to chapter 80.04 RCW; adding a new section to chapter 80.70 RCW; adding a new chapter to Title 80 RCW; creating a new section; providing an expiration date; and providing a contingent expiration date.

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

NEW SECTION. Sec. 101. (1) The legislature finds that generating electricity from the combustion of coal produces pollutants that are harmful to human health and safety and the environment. While the emission of many of these pollutants continues to be addressed through application of federal and state air quality laws, the emission of greenhouse gases resulting from the combustion of coal has not been addressed.

(2) The legislature finds that coal-fired electricity generation is one of the largest sources of greenhouse gas emissions in the state, and is the largest source of such emissions from the generation of electricity in the state.

(3) The legislature finds coal-fired electric generation may provide baseload power that is necessary in the near-term for the stability and reliability of the electrical transmission grid and that contributes to the availability of affordable power in the state. The legislature further finds that efforts to transition power to other fuels requires a reasonable period of time to ensure grid stability and to maintain affordable electricity resources.

(4) The legislature finds that coal-fired baseload electric generation facilities are a significant contributor to family-wage jobs and economic health in parts of the state and that transition of these facilities must address the economic future and the preservation of jobs in affected communities.

(5) Therefore, it is the purpose of this act to provide for the reduction of greenhouse gas emissions from large coal-fired baseload electric power generation facilities, to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state's electrical grid, to ensure appropriate cleanup and site restoration upon decommissioning of any of these facilities in the state, and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

Sec. 102. RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are each reenacted and amended to read as follows:

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

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

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse ((gases)) gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

(19) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040(3)(c).

(20) "Memorandum of agreement" or "memorandum" means a binding and enforceable contract entered into pursuant to section 106 of this act between the governor on behalf of the state and an owner of a baseload electric generation facility in the state that produces coal transition power.

Sec. 103. RCW 80.80.040 and 2009 c 448 s 2 are each amended to read as follows:

(1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3)(a) Except as provided in (c) of this subsection, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(b) All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance

by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

(A) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(B) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(ii) This subsection (3)(c) does not apply to a coal-fired baseload electric generating facility in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of ~~((community, trade, and economic development))~~ commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity ~~((coordination [coordinating]))~~ coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of ~~((community, trade, and economic development))~~ commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative

proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric (~~(generating)~~) generation facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

Sec. 104. RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are each reenacted and amended to read as follows:

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~(gases—gas))~~ gas emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse (~~(gases—gas))~~ gas emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse (~~(gases—gas))~~ gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric

generation or enter into a power purchase agreement for electricity complies with the greenhouse (~~(gases—[gas])~~) gas emissions performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse (~~(gases—[gas])~~) gas emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) This section does not apply to a long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

(10) The commission shall adopt rules necessary to implement this section by December 31, 2008.

Sec. 105. RCW 80.80.070 and 2007 c 307 s 9 are each amended to read as follows:

(1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse (~~(gases)~~) gas emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies

with the greenhouse ((gases)) gas emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse ((gases)) gas emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse ((gases)) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

(7) This section does not apply to long-term financial commitments for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

NEW SECTION. Sec. 106. A new section is added to chapter 80.80 RCW to read as follows:

(1) By January 1, 2012, the governor on behalf of the state shall enter into a memorandum of agreement that takes effect on April 1, 2012, with the owners of a coal-fired baseload facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The memorandum of agreement entered into by the governor may only contain provisions authorized in this section, except as provided under section 108 of this act.

(2) The memorandum of agreement must:

(a) Incorporate by reference RCW 80.80.040, 80.80.060, and 80.80.070 as of the effective date of this section;

(b) Incorporate binding commitments to install selective noncatalytic reduction pollution control technology in any coal-fired generating boilers by January 1, 2013, after discussing the proper use of ammonia in this technology.

(3)(a) The memorandum of agreement must include provisions by which the facility owner will provide financial assistance:

(i) To the affected community for economic development and energy efficiency and weatherization; and

(ii) For energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits.

(b) Except as described in (c) of this subsection, the financial assistance in (a)(i) of this subsection must be in the amount of thirty million dollars and the

financial assistance in (a)(ii) of this subsection must be in the amount of twenty-five million dollars, with investments beginning January 1, 2012, and consisting of equal annual investments through December 31, 2023, or until the full amount has been provided. Only funds for energy efficiency and weatherization may be spent prior to December 31, 2015.

(c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811 are repealed, any remaining financial assistance required by this section is no longer required.

(4) The memorandum of agreement must:

(a) Specify that the investments in subsection (3) of this section be held in independent accounts at an appropriate financial institution; and

(b) Identify individuals to approve expenditures from the accounts. Individuals must have relevant expertise and must include members representing the Lewis county economic development council, local elected officials, employees at the facility, and the facility owner.

(5) The memorandum of agreement must include a provision that allows for the termination of the memorandum of agreement in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(6) The memorandum of agreement must include enforcement provisions to ensure implementation of the agreement by the parties.

(7) If the memorandum of agreement is not signed by January 1, 2012, the governor must impose requirements consistent with the provisions in subsection (2)(b) of this section.

NEW SECTION. Sec. 107. A new section is added to chapter 80.80 RCW to read as follows:

No state agency or political subdivision of the state may adopt or impose a greenhouse gas emission performance standard, or other operating or financial requirement or limitation relating to greenhouse gas emissions, on a coal-fired electric generation facility located in Washington in operation on or before the effective date of this section or upon an electric utility's long-term purchase of coal transition power, that is inconsistent with or in addition to the provisions of RCW 80.80.040 or the memorandum of agreement entered into under section 106 of this act.

NEW SECTION. Sec. 108. A new section is added to chapter 80.80 RCW to read as follows:

(1) A memorandum of agreement entered into pursuant to section 106 of this act may include provisions to assist in the financing of emissions reductions that exceed those required by RCW 80.80.040(3)(c) by providing for the recognition of such reductions in applicable state policies and programs relating to greenhouse gas emissions, and by encouraging and advocating for the recognition of the reductions in all established and emerging emission reduction frameworks at the regional, national, or international level.

(2) The governor may recommend actions to the legislature to strengthen implementation of an agreement or a proposed agreement relating to recognition of investments in emissions reductions described in subsection (1) of this section.

Sec. 109. RCW 80.50.100 and 1989 c 175 s 174 are each amended to read as follows:

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(b) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

~~((2))~~ (3)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

~~((a))~~ (i) Approve the application and execute the draft certification agreement; or

~~((b))~~ (ii) Reject the application; or

~~((c))~~ (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

~~((3))~~ (4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

NEW SECTION. Sec. 201. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must provide the department of ecology with a plan for the closure and postclosure of the facility at least twenty-four months prior to facility

closure or twenty-four months prior to start of decommissioning work, whichever is earlier. This plan must be consistent with the rules established by the energy facility site evaluation council for site restoration and preservation applicable to facilities subject to a site certification agreement under chapter 80.50 RCW and include but not be limited to:

(a) A detailed estimate of the cost to implement the plan based on the cost of hiring a third party to conduct all activities;

(b) Demonstrating financial assurance to fund the closure and postclosure of the facility and providing methods by which this assurance may be demonstrated;

(c) Methods for estimating closure costs, including full site reclamation under all applicable federal and state clean-up standards; and

(d) A decommissioning and site restoration plan that addresses restoring physical topography, cleanup of all hazardous substances on the site, potential future uses of the site following restoration, and coordination with local and community plans for economic development in the vicinity of the site.

(2) All cost estimates in the plan must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property.

(3) Adoption of the plan and significant revisions to the plan must be approved by the department of ecology.

NEW SECTION. Sec. 202. (1) A facility subject to closure under either RCW 80.80.040(3)(c) or a memorandum of agreement under section 106 of this act, or both, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under section 201 of this act. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency. The surety company issuing a surety bond must, at a minimum, be an entity listed as an acceptable surety on federal bonds in circular 570, published by the United States department of the treasury.

(4) A qualifying facility that uses a letter of credit or a surety bond to satisfy the requirements of this act must also establish a standby trust fund as a means to hold any funds issued from the letter of credit or a surety bond. Under the terms of the letter of credit or a surety bond, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit or a surety bond must be irrevocable and issued for a period of at least one year. The letter of credit or a surety bond must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of

ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit or a surety bond. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate. If a qualifying facility elects to use a surety bond as the sole method for guaranteeing decommissioning funds are available, the penal sum of the surety bond must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit or a surety bond each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit or a surety bond to cover annual inflation adjustments.

NEW SECTION. Sec. 203. Sections 201 and 202 of this act constitute a new chapter in Title 80 RCW.

Sec. 301. RCW 43.160.076 and 2008 c 327 s 8 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 under this chapter, the board shall approve at least seventy-five percent of the first twenty million dollars of funds available and at least fifty percent of any additional funds for financial assistance for projects in rural counties.

(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 rural counties are clearly insufficient to use up the allocations under subsection (1) of this section, 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 rural counties.

(3) The board shall solicit qualifying projects to plan, design, and construct public facilities needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state

for financial assistance for such projects, the board from available funds shall give priority consideration to such projects.

NEW SECTION. Sec. 302. A new section is added to chapter 43.155 RCW to read as follows:

The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall give priority consideration to such projects.

NEW SECTION. Sec. 303. A new section is added to chapter 80.04 RCW to read as follows:

The legislature finds that an electrical company's acquisition of coal transition power helps to achieve the state's greenhouse gas emission reduction goals by effecting an orderly transition to cleaner fuels and supports the state's public policy.

NEW SECTION. Sec. 304. A new section is added to chapter 80.04 RCW to read as follows:

(1) On the petition of an electrical company, the commission shall approve or disapprove a power purchase agreement for acquisition of coal transition power, as defined in RCW 80.80.010, and the recovery of related acquisition costs. No agreement for an electrical company's acquisition of coal transition power takes effect until it is approved by the commission.

(2) Any power purchase agreement for the acquisition of coal transition power pursuant to this section must provide for modification of the power purchase agreement to the satisfaction of the parties thereto in the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal law, rules, or regulatory requirements. Such a modification to a power purchase agreement agreed to by the parties must be reviewed and considered for approval by the commission, considering the circumstances existing at the time of such a review, under procedures and standards set forth in this section. In the event the parties cannot agree to modification of the power purchase agreement, either party to the agreement has the right to terminate the agreement if it is adversely affected by this new standard, requirement, or limitation.

(3) When a petition is filed, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapter 34.05 RCW. Any party may request that the commission expedite the hearing of that petition. The hearing of such a petition is not considered a general rate case. The electrical company must file supporting testimony and exhibits together with the power purchase agreement for coal transition power. Information provided by the facility owner to the

purchasing electrical company for evaluating the costs and benefits associated with acquisition of coal transition power must be made available to other parties to the petition under a protective order entered by the commission. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves or disapproves the power purchase agreement for acquisition of coal transition power within one hundred eighty days after an electrical company files the petition.

(4) The commission must approve a power purchase agreement for acquisition of coal transition power pursuant to this section only if the commission determines that, considering the circumstances existing at the time of such a review: The terms of such an agreement provide adequate protection to ratepayers and the electrical company during the term of such an agreement or in the event of early termination; the resource is needed by the electrical company to serve its ratepayers and the resource meets the need in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW, including the cost of the power purchase agreement plus the equity component as determined in this section. As part of these determinations, the commission shall consider, among other factors, the long-term economic risks and benefits to the electrical company and its ratepayers of such a long-term purchase.

(5) If the commission has not issued a final order within one hundred eighty days from the date the petition is filed, or if the commission disapproves the petition, the power purchase agreement for acquisition of coal transition power is null and void. In the event the commission approves the agreement upon conditions other than those set forth in the petition, the electrical company has the right to reject the agreement.

(6)(a) Upon commission approval of an electrical company's power purchase agreement for acquisition of coal transition power in accordance with this section, the electrical company is allowed to earn the equity component of its authorized rate of return in the same manner as if it had purchased or built an equivalent plant and to recover the cost of the coal transition power under the power purchase agreement. Any power purchase agreement for acquisition of coal transition power that earns a return on equity may not be included in an imputed debt calculation for setting customer rates.

(b) For purposes of determining the equity value, the cost of an equivalent plant is the least cost purchased or self-built electric generation plant with equivalent capacity. In determining the least cost plant, the commission may rely on the electrical company's most recent filed integrated resource plan. The cost of an equivalent plant, in dollars per kilowatt, must be determined in the original process of commission approval for each power purchase agreement for coal transition power.

(c) The equivalent plant cost determined in the approval process must be amortized over the life of the power purchase agreement for acquisition of coal transition power to determine the recovery of the equity value.

(d) The recovery of the equity component must be determined and approved in the review process set forth in this section. The approved equity value must be in addition to the approved cost of the power purchase agreement.

(7) Authorizing recovery of costs under a power purchase agreement for acquisition of coal transition power does not prohibit the commission from authorizing recovery of an electrical company's acquisition of capacity resources for the purpose of integrating intermittent power or following load.

(8) Neither this act nor the commission's approval of a power purchase agreement for acquisition of coal transition power that includes the ability to earn the equity component of an electrical company's authorized rate of return establishes any precedent for an electrical company to receive an equity return on any other power purchase agreement or other power contract.

(9) For purposes of this section, "power purchase agreement" means a long-term financial commitment as defined in RCW 80.80.010(15)(b).

(10) This section expires December 31, 2025.

Sec. 305. RCW 19.280.030 and 2006 c 195 s 3 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. Sec. 306. A new section is added to chapter 80.70 RCW to read as follows:

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

NEW SECTION. Sec. 307. 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 by the Senate April 21, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 181

[Engrossed Second Substitute Senate Bill 5073]

MEDICAL CANNABIS

AN ACT Relating to medical use of cannabis; amending RCW 69.51A.005, 69.51A.020, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.050, 69.51A.060, and 69.51A.900; adding new sections to chapter 69.51A RCW; adding new sections to chapter 42.56 RCW; adding a new section to chapter 28B.20 RCW; creating new sections; repealing RCW 69.51A.080; prescribing penalties; and providing an effective date.

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

PART I

LEGISLATIVE DECLARATION AND INTENT

***NEW SECTION. Sec. 101.** *(1) The legislature intends to amend and clarify the law on the medical use of cannabis so that:*

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be

subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

(c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

(2) This act is not intended to amend or supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes.

(3) This act is not intended to compromise community safety. State, county, or city correctional agencies or departments shall retain the authority to establish and enforce terms for those on active supervision.

*Sec. 101 was vetoed. See message at end of chapter.

Sec. 102. RCW 69.51A.005 and 2010 c 284 s 1 are each amended to read as follows:

(1) The ((people of Washington state)) legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating ((illnesses)) medical conditions may, under their health care professional's care, ((may)) benefit from the medical use of ((marijuana)) cannabis. Some of the ((illnesses)) conditions for which ((marijuana)) cannabis appears to be beneficial include ((chemotherapy-related)), but are not limited to:

(i) Nausea ((and)), vomiting ((in cancer patients; AIDS-wasting syndrome)), and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity disorders; ((epilepsy;))

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

((The people find that)) (b) Humanitarian compassion necessitates that the decision to ((authorize the medical)) use ((of marijuana)) cannabis by patients with terminal or debilitating ((illnesses)) medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the ((people of the state of Washington)) legislature intends that:

(a) Qualifying patients with terminal or debilitating ((illnesses)) medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ((marijuana)) cannabis, shall not be ((found guilty of a crime under state law for their possession and limited use of marijuana)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be ((found guilty of a crime under state law for)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of ((marijuana)) cannabis; and

(c) Health care professionals shall also ~~((be excepted from liability and prosecution))~~ not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of ((marijuana)) medical use ((to)) of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical ((marijuana)) use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local governments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail.

Sec. 103. RCW 69.51A.020 and 1999 c 2 s 3 are each amended to read as follows:

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of ~~((marijuana))~~ cannabis for nonmedical purposes. Criminal penalties created under this act do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes.

PART II DEFINITIONS

**Sec. 201. RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:*

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

(1) "Cannabis" 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. For the purposes of this chapter, "cannabis" 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. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis analysis laboratory" means a laboratory that performs chemical analysis and inspection of cannabis samples.

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC

concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(4) "Correctional facility" has the same meaning as provided in RCW 72.09.015.

(5) "Corrections agency or department" means any agency or department in the state of Washington, including local governments or jails, that is vested with the responsibility to manage those individuals who are being supervised in the community for a criminal conviction and has established a written policy for determining when the medical use of cannabis, including possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

(6) "Designated provider" means a person who:

(a) Is eighteen years of age or older;

(b) Has been designated in ~~((writing))~~ a written document signed and dated by a qualifying patient to serve as a designated provider under this chapter; and

(c) Is ~~((prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and~~

~~(d) Is the designated provider to only one patient at any one time.~~

~~(2)) in compliance with the terms and conditions set forth in RCW 69.51A.040.~~

A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patients' cannabis at the same time.

(7) "Director" means the director of the department of agriculture.

(8) "Dispense" means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis by a licensed dispenser to a qualifying patient or designated provider.

(9) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

~~((3)) (10) "Jail" has the same meaning as provided in RCW 70.48.020.~~

(11) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any cannabis intended for medical use, or (b) accompanying such cannabis.

(12) "Licensed dispenser" means a person licensed to dispense cannabis for medical use to qualifying patients and designated providers by the department of health in accordance with rules adopted by the department of health pursuant to the terms of this chapter.

(13) "Licensed processor of cannabis products" means a person licensed by the department of agriculture to manufacture, process, handle, and label cannabis products for wholesale to licensed dispensers.

(14) "Licensed producer" means a person licensed by the department of agriculture to produce cannabis for medical use for wholesale to licensed

dispensers and licensed processors of cannabis products in accordance with rules adopted by the department of agriculture pursuant to the terms of this chapter.

(15) "Medical use of (~~marijuana~~) cannabis" means the manufacture, production, processing, possession, transportation, delivery, dispensing, ingestion, application, or administration of (~~marijuana, as defined in RCW 69.50.101(4)~~) cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating (~~illness~~) medical condition.

(~~(4)~~) (16) "Nonresident" means a person who is temporarily in the state but is not a Washington state resident.

(17) "Peace officer" means any law enforcement personnel as defined in RCW 43.101.010.

(18) "Person" means an individual or an entity.

(19) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products for purposes of registration with the department of health or department of agriculture. The term "personally identifiable information" also means any information used by the department of health or department of agriculture to identify a person as a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products.

(20) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(21) "Process" means to handle or process cannabis in preparation for medical use.

(22) "Processing facility" means the premises and equipment where cannabis products are manufactured, processed, handled, and labeled for wholesale to licensed dispensers.

(23) "Produce" means to plant, grow, or harvest cannabis for medical use.

(24) "Production facility" means the premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged, or labeled by a licensed producer for wholesale, delivery, or transportation to a licensed dispenser or licensed processor of cannabis products, and all vehicles and equipment used to transport cannabis from a licensed producer to a licensed dispenser or licensed processor of cannabis products.

(25) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are

open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(26) "Qualifying patient" means a person who:

(a)(i) Is a patient of a health care professional;

~~((b))~~ (ii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

~~((c))~~ (iii) Is a resident of the state of Washington at the time of such diagnosis;

~~((d))~~ (iv) Has been advised by that health care professional about the risks and benefits of the medical use of ~~((marijuana))~~ cannabis; ~~(and~~

~~((e))~~ (v) Has been advised by that health care professional that ~~((they))~~ he or she may benefit from the medical use of ~~((marijuana))~~ cannabis; and

(vi) Is otherwise in compliance with the terms and conditions established in this chapter.

(b) The term "qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

~~((5))~~ (27) "Secretary" means the secretary of health.

(28) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

~~((6))~~ (29) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, ~~((wasting))~~ cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

~~((7))~~ (30) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(31) "Useable cannabis" means dried flowers of the Cannabis plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

(32)(a) Until January 1, 2013, "valid documentation" means:

~~((a))~~ (i) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of ~~(marijuana)~~ cannabis; ~~and~~

~~((b))~~ (ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider; and

(b) Beginning July 1, 2012, "valid documentation" means:

(i) An original statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper and valid for up to one year from the date of the health care professional's signature, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;

(ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(iii) In the case of a designated provider, the signed and dated document valid for up to one year from the date of signature executed by the qualifying patient who has designated the provider.

*Sec. 201 was vetoed. See message at end of chapter.

PART III PROTECTIONS FOR HEALTH CARE PROFESSIONALS

Sec. 301. RCW 69.51A.030 and 2010 c 284 s 3 are each amended to read as follows:

~~((A health care professional shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for))~~

(1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

~~((4))~~ (a) Advising a ~~((qualifying))~~ patient about the risks and benefits of medical use of ~~((marijuana))~~ cannabis or that the ~~((qualifying))~~ patient may benefit from the medical use of ~~((marijuana where such use is within a professional standard of care or in the individual health care professional's medical judgment))~~ cannabis; or

~~((2))~~ (b) Providing a ~~((qualifying))~~ patient meeting the criteria established under RCW 69.51A.010(26) with valid documentation, based upon the health care professional's assessment of the ~~((qualifying))~~ patient's medical history and current medical condition, ~~((that the medical use of marijuana may benefit a particular qualifying patient))~~ where such use is within a professional standard of care or in the individual health care professional's medical judgment.

(2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

(i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;

(ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

(iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

(i) Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;

(ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producer, or licensed processor of cannabis products;

(iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;

(iv) Have a business or practice which consists solely of authorizing the medical use of cannabis;

(v) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or

(vi) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW.

**PART IV
PROTECTIONS FOR QUALIFYING PATIENTS
AND DESIGNATED PROVIDERS**

Sec. 401. RCW 69.51A.040 and 2007 c 371 s 5 are each amended to read as follows:

~~((1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.~~

~~(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.~~

~~(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:~~

~~(a) Meet all criteria for status as a qualifying patient or designated provider;~~

~~(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and~~

~~(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.~~

~~(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.)) The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:~~

~~(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:~~

~~(i) No more than twenty-four ounces of useable cannabis;~~

~~(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or~~

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(3) The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;

(4) The investigating peace officer does not possess evidence that:

(a) The designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit; or

(b) The qualifying patient has converted cannabis produced or obtained for his or her own medical use to the qualifying patient's personal, nonmedical use or benefit;

(5) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period; and

(6) The investigating peace officer has not observed evidence of any of the circumstances identified in section 901(4) of this act.

NEW SECTION. Sec. 402. (1) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act may raise the affirmative defense set forth in subsection (2) of this section, if:

(a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);

(c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;

(d) The investigating peace officer does not have probable cause to believe that the qualifying patient or designated provider has committed a felony, or is committing a misdemeanor in the officer's presence, that does not relate to the medical use of cannabis;

(e) No outstanding warrant for arrest exists for the qualifying patient or designated provider; and

(f) The investigating peace officer has not observed evidence of any of the circumstances identified in section 901(4) of this act.

(2) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense

to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

NEW SECTION. Sec. 403. (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

NEW SECTION. Sec. 404. (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider.

NEW SECTION. Sec. 405. A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by

a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants, useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance.

NEW SECTION. Sec. 406. A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under section 405 of this act.

***NEW SECTION. Sec. 407.** *A nonresident who is duly authorized to engage in the medical use of cannabis under the laws of another state or territory of the United States may raise an affirmative defense to charges of violations of Washington state law relating to cannabis, provided that the nonresident:*

(1) Possesses no more than fifteen cannabis plants and no more than twenty-four ounces of useable cannabis, no more cannabis product than reasonably could be produced with no more than twenty-four ounces of useable cannabis, or a combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis;

(2) Is in compliance with all provisions of this chapter other than requirements relating to being a Washington resident or possessing valid documentation issued by a licensed health care professional in Washington;

(3) Presents the documentation of authorization required under the nonresident's authorizing state or territory's law and proof of identity issued by the authorizing state or territory to any peace officer who questions the nonresident regarding his or her medical use of cannabis; and

(4) Does not possess evidence that the nonresident has converted cannabis produced or obtained for his or her own medical use to the nonresident's personal, nonmedical use or benefit.

*Sec. 407 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 408. A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health

care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant.

NEW SECTION. Sec. 409. A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004.

***NEW SECTION. Sec. 410.** (1) *Except as provided in subsection (2) of this section, a qualifying patient may not be refused housing or evicted from housing solely as a result of his or her possession or use of useable cannabis or cannabis products except that housing providers otherwise permitted to enact and enforce prohibitions against smoking in their housing may apply those prohibitions to smoking cannabis provided that such smoking prohibitions are applied and enforced equally as to the smoking of cannabis and the smoking of all other substances, including without limitation tobacco.*

(2) *Housing programs containing a program component prohibiting the use of drugs or alcohol among its residents are not required to permit the medical use of cannabis among those residents.*

*Sec. 410 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 411.** *In imposing any criminal sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order, any court organized under the laws of Washington state may permit the medical use of cannabis in compliance with the terms of this chapter and exclude it as a possible ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order. This section does not require the accommodation of any medical use of cannabis in any correctional facility or jail.*

*Sec. 411 was vetoed. See message at end of chapter.

***Sec. 412.** *RCW 69.51A.050 and 1999 c 2 s 7 are each amended to read as follows:*

(1) *The lawful possession, delivery, dispensing, production, or manufacture of ((medical marijuana)) cannabis for medical use as authorized by this chapter shall not result in the forfeiture or seizure of any real or personal property including, but not limited to, cannabis intended for medical use, items used to facilitate the medical use of cannabis or its production or dispensing for medical use, or proceeds of sales of cannabis for medical use made by licensed producers, licensed processors of cannabis products, or licensed dispensers.*

(2) *No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of ((medical marijuana)) cannabis intended for medical use or its use as authorized by this chapter.*

(3) *The state shall not be held liable for any deleterious outcomes from the medical use of ((marijuana)) cannabis by any qualifying patient.*

*Sec. 412 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 413. Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

PART V
LIMITATIONS ON PROTECTIONS FOR QUALIFYING
PATIENTS AND DESIGNATED PROVIDERS

Sec. 501. RCW 69.51A.060 and 2010 c 284 s 4 are each amended to read as follows:

(1) It shall be a ~~((misdemeanor))~~ class 3 civil infraction to use or display medical ~~((marijuana))~~ cannabis in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter ~~((requires any health insurance provider))~~ establishes a right of care as a covered benefit or requires any state purchased health care as defined in RCW 41.05.011 or other health carrier or health plan as defined in Title 48 RCW to be liable for any claim for reimbursement for the medical use of ((marijuana)) cannabis. Such entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in their sole discretion.

(3) Nothing in this chapter requires any health care professional to authorize the medical use of ~~((medical marijuana))~~ cannabis for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of ~~((marijuana))~~ cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking ~~((medical marijuana))~~ cannabis in any public place ~~((as that term is defined in RCW 70.160.020))~~ or hotel or motel.

(5) Nothing in this chapter authorizes the use of medical cannabis by any person who is subject to the Washington code of military justice in chapter 38.38 RCW.

(6) Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free work place.

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010~~((7))~~ (32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

~~((6))~~ (8) No person shall be entitled to claim the ~~((affirmative defense provided in RCW 69.51A.040))~~ protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under section 402 of this act for engaging in the medical use of ((marijuana)) cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances.

**PART VI
LICENSED PRODUCERS AND LICENSED PROCESSORS
OF CANNABIS PRODUCTS**

***NEW SECTION. Sec. 601.** *A person may not act as a licensed producer without a license for each production facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed producers and their employees, members, officers, and directors may manufacture, plant, cultivate, grow, harvest, produce, prepare, propagate, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, and useable cannabis, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.*

**Sec. 601 was vetoed. See message at end of chapter.*

***NEW SECTION. Sec. 602.** *A person may not act as a licensed processor without a license for each processing facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed processors of cannabis products and their employees, members, officers, and directors may possess useable cannabis and manufacture, produce, prepare, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis products intended for medical use by qualifying patients, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.*

**Sec. 602 was vetoed. See message at end of chapter.*

***NEW SECTION. Sec. 603.** *The director shall administer and carry out the provisions of this chapter relating to licensed producers and licensed processors of cannabis products, and rules adopted under this chapter.*

**Sec. 603 was vetoed. See message at end of chapter.*

***NEW SECTION. Sec. 604.** (1) *On a schedule determined by the department of agriculture, licensed producers and licensed processors must submit representative samples of cannabis grown or processed to a cannabis analysis laboratory for grade, condition, cannabinoid profile, THC concentration, other qualitative measurements of cannabis intended for medical use, and other inspection standards determined by the department of agriculture. Any samples remaining after testing must be destroyed by the laboratory or returned to the licensed producer or licensed processor.*

(2) *Licensed producers and licensed processors must submit copies of the results of this inspection and testing to the department of agriculture on a form developed by the department.*

(3) *If a representative sample of cannabis tested under this section has a THC concentration of three-tenths of one percent or less, the lot of cannabis*

the sample was taken from may not be sold for medical use and must be destroyed or sold to a manufacturer of hemp products.

*Sec. 604 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 605. The department of agriculture may contract with a cannabis analysis laboratory to conduct independent inspection and testing of cannabis samples to verify testing results provided under section 604 of this act.*

*Sec. 605 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 606. The department of agriculture may adopt rules on:*

(1) Facility standards, including scales, for all licensed producers and licensed processors of cannabis products;

(2) Measurements for cannabis intended for medical use, including grade, condition, cannabinoid profile, THC concentration, other qualitative measurements, and other inspection standards for cannabis intended for medical use; and

(3) Methods to identify cannabis intended for medical use so that such cannabis may be readily identified if stolen or removed in violation of the provisions of this chapter from a production or processing facility, or if otherwise unlawfully transported.

*Sec. 606 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 607. The director is authorized to deny, suspend, or revoke a producer's or processor's license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter or rules adopted hereunder. All hearings for the denial, suspension, or revocation of a producer's or processor's license are subject to chapter 34.05 RCW, the administrative procedure act, as enacted or hereafter amended.*

*Sec. 607 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 608. (1) By January 1, 2013, taking into consideration, but not being limited by, the security requirements described in 21 C.F.R. Sec. 1301.71-1301.76, the director shall adopt rules:*

(a) On the inspection or grading and certification of grade, grading factors, condition, cannabinoid profile, THC concentration, or other qualitative measurement of cannabis intended for medical use that must be used by cannabis analysis laboratories in section 604 of this act;

(b) Fixing the sizes, dimensions, and safety and security features required of containers to be used for packing, handling, or storing cannabis intended for medical use;

(c) Establishing labeling requirements for cannabis intended for medical use including, but not limited to:

(i) The business or trade name and Washington state unified business identifier (UBI) number of the licensed producer of the cannabis;

(ii) THC concentration; and

(iii) Information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(d) Establishing requirements for transportation of cannabis intended for medical use from production facilities to processing facilities and licensed dispensers;

(e) Establishing security requirements for the facilities of licensed producers and licensed processors of cannabis products. These security requirements must consider the safety of the licensed producers and licensed processors as well as the safety of the community surrounding the licensed producers and licensed processors;

(f) Establishing requirements for the licensure of producers, and processors of cannabis products, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements; and

(g) Establishing license application and renewal fees for the licensure of producers and processors of cannabis products.

(2) Fees collected under this section must be deposited into the agricultural local fund created in RCW 43.23.230.

(3) During the rule-making process, the department of agriculture shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of health.

*Sec. 608 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 609. (1) Each licensed producer and licensed processor of cannabis products shall maintain complete records at all times with respect to all cannabis produced, processed, weighed, tested, stored, shipped, or sold. The director shall adopt rules specifying the minimum recordkeeping requirements necessary to comply with this section.*

(2) The property, books, records, accounts, papers, and proceedings of every licensed producer and licensed processor of cannabis products shall be subject to inspection by the department of agriculture at any time during ordinary business hours. Licensed producers and licensed processors of cannabis products shall maintain adequate records and systems for the filing and accounting of crop production, product manufacturing and processing, records of weights and measurements, product testing, receipts, canceled receipts, other documents, and transactions necessary or common to the medical cannabis industry.

(3) The director may administer oaths and issue subpoenas to compel the attendance of witnesses, or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purposes and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW.

(4) Each licensed producer and licensed processor of cannabis products shall report information to the department of agriculture at such times and as may be reasonably required by the director for the necessary enforcement and supervision of a sound, reasonable, and efficient cannabis inspection program for the protection of the health and welfare of qualifying patients.

*Sec. 609 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 610. (1) The department of agriculture may give written notice to a licensed producer or processor of cannabis products to furnish required reports, documents, or other requested information, under*

such conditions and at such time as the department of agriculture deems necessary if a licensed producer or processor of cannabis products fails to:

(a) Submit his or her books, papers, or property to lawful inspection or audit;

(b) Submit required laboratory results, reports, or documents to the department of agriculture by their due date; or

(c) Furnish the department of agriculture with requested information.

(2) If the licensed producer or processor of cannabis products fails to comply with the terms of the notice within seventy-two hours from the date of its issuance, or within such further time as the department of agriculture may allow, the department of agriculture shall levy a fine of five hundred dollars per day from the final date for compliance allowed by this section or the department of agriculture. In those cases where the failure to comply continues for more than seven days or where the director determines the failure to comply creates a threat to public health, public safety, or a substantial risk of diversion of cannabis to unauthorized persons or purposes, the department of agriculture may, in lieu of levying further fines, petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department of agriculture to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the licensed producer or processor's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the licensed producer or processor from interfering with the department of agriculture in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department of agriculture in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

(4) The department of agriculture may request the Washington state patrol to assist it in enforcing this section if needed to ensure the safety of its employees.

*Sec. 610 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 611. (1) A licensed producer may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed processor of cannabis products, licensed dispenser, or law enforcement officer except as provided by court order. A licensed producer may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.*

(2) A licensed processor of cannabis products may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed dispenser, or law enforcement officer except as provided by court order. A licensed processor of cannabis products may also sell or deliver cannabis to the University of Washington or Washington State University for research

purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

**Sec. 611 was vetoed. See message at end of chapter.*

PART VII LICENSED DISPENSERS

****NEW SECTION.** Sec. 701. A person may not act as a licensed dispenser without a license for each place of business issued by the department of health and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed dispensers and their employees, members, officers, and directors may deliver, distribute, dispense, transfer, prepare, package, repackage, label, relabel, sell at retail, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, useable cannabis, and cannabis products, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.*

**Sec. 701 was vetoed. See message at end of chapter.*

****NEW SECTION.** Sec. 702. (1) By January 1, 2013, taking into consideration the security requirements described in 21 C.F.R. 1301.71-1301.76, the secretary of health shall adopt rules:*

- (a) Establishing requirements for the licensure of dispensers of cannabis for medical use, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements;*
- (b) Providing for mandatory inspection of licensed dispensers' locations;*
- (c) Establishing procedures governing the suspension and revocation of licenses of dispensers;*
- (d) Establishing recordkeeping requirements for licensed dispensers;*
- (e) Fixing the sizes and dimensions of containers to be used for dispensing cannabis for medical use;*
- (f) Establishing safety standards for containers to be used for dispensing cannabis for medical use;*
- (g) Establishing cannabis storage requirements, including security requirements;*
- (h) Establishing cannabis labeling requirements, to include information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;*
- (i) Establishing physical standards for cannabis dispensing facilities. The physical standards must require a licensed dispenser to ensure that no cannabis or cannabis paraphernalia may be viewed from outside the facility;*
- (j) Establishing maximum amounts of cannabis and cannabis products that may be kept at one time at a dispensary. In determining maximum amounts, the secretary must consider the security of the dispensary and the surrounding community;*
- (k) Establishing physical standards for sanitary conditions for cannabis dispensing facilities;*

(l) Establishing physical and sanitation standards for cannabis dispensing equipment;

(m) Establishing a maximum number of licensed dispensers that may be licensed in each county as provided in this section;

(n) Enforcing and carrying out the provisions of this section and the rules adopted to carry out its purposes; and

(o) Establishing license application and renewal fees for the licensure of dispensers in accordance with RCW 43.70.250.

(2)(a) The secretary shall establish a maximum number of licensed dispensers that may operate in each county. Prior to January 1, 2016, the maximum number of licensed dispensers shall be based upon a ratio of one licensed dispenser for every twenty thousand persons in a county. On or after January 1, 2016, the secretary may adopt rules to adjust the method of calculating the maximum number of dispensers to consider additional factors, such as the number of enrollees in the registry established in section 901 of this act and the secretary's experience in administering the program. The secretary may not issue more licenses than the maximum number of licenses established under this section.

(b) In the event that the number of applicants qualifying for the selection process exceeds the maximum number for a county, the secretary shall initiate a random selection process established by the secretary in rule.

(c) To qualify for the selection process, an applicant must demonstrate to the secretary that he or she meets initial screening criteria that represent the applicant's capacity to operate in compliance with this chapter. Initial screening criteria shall include, but not be limited to:

(i) Successful completion of a background check;

(ii) A plan to systematically verify qualifying patient and designated provider status of clients;

(iii) Evidence of compliance with functional standards, such as ventilation and security requirements; and

(iv) Evidence of compliance with facility standards, such as zoning compliance and not using the facility as a residence.

(d) The secretary shall establish a schedule to:

(i) Update the maximum allowable number of licensed dispensers in each county; and

(ii) Issue approvals to operate within a county according to the random selection process.

(3) Fees collected under this section must be deposited into the health professions account created in RCW 43.70.320.

(4) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of agriculture.

**Sec. 702 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 703. A licensed dispenser may not sell cannabis received from any person other than a licensed producer or licensed processor of cannabis products, or sell or deliver cannabis to any person other than a qualifying patient, designated provider, or law enforcement officer except as*

provided by court order. A licensed dispenser may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Before selling or providing cannabis to a qualifying patient or designated provider, the licensed dispenser must confirm that the patient qualifies for the medical use of cannabis by contacting, at least once in a one-year period, that patient's health care professional. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

*Sec. 703 was vetoed. See message at end of chapter.

****NEW SECTION.** Sec. 704. A license to operate as a licensed dispenser is not transferrable.*

*Sec. 704 was vetoed. See message at end of chapter.

****NEW SECTION.** Sec. 705. The secretary of health shall not issue or renew a license to an applicant or licensed dispenser located within five hundred feet of a community center, child care center, elementary or secondary school, or another licensed dispenser.*

*Sec. 705 was vetoed. See message at end of chapter.

**PART VIII
MISCELLANEOUS PROVISIONS APPLYING TO ALL
LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS**

****NEW SECTION.** Sec. 801. All weighing and measuring instruments and devices used by licensed producers, processors of cannabis products, and dispensers shall comply with the requirements set forth in chapter 19.94 RCW.*

*Sec. 801 was vetoed. See message at end of chapter.

****NEW SECTION.** Sec. 802. (1) No person, partnership, corporation, association, or agency may advertise cannabis for sale to the general public in any manner that promotes or tends to promote the use or abuse of cannabis. For the purposes of this subsection, displaying cannabis, including artistic depictions of cannabis, is considered to promote or to tend to promote the use or abuse of cannabis.*

(2) The department of agriculture may fine a licensed producer or processor of cannabis products up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the agriculture local fund created in RCW 43.23.230.

(3) The department of health may fine a licensed dispenser up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the health professions account created in RCW 43.70.320.

(4) No broadcast television licensee, radio broadcast licensee, newspaper, magazine, advertising agency, or agency or medium for the dissemination of an advertisement, except the licensed producer, processor of cannabis products, or dispenser to which the advertisement relates, is subject to the penalties of this section by reason of dissemination of advertising in good faith without knowledge that the advertising promotes or tends to promote the use or abuse of cannabis.

*Sec. 802 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 803. (1) A prior conviction for a cannabis or marijuana offense shall not disqualify an applicant from receiving a license to produce, process, or dispense cannabis for medical use, provided the conviction did not include any sentencing enhancements under RCW 9.94A.533 or analogous laws in other jurisdictions. Any criminal conviction of a current licensee may be considered in proceedings to suspend or revoke a license.*

(2) Nothing in this section prohibits either the department of health or the department of agriculture, as appropriate, from denying, suspending, or revoking the credential of a license holder for other drug-related offenses or any other criminal offenses.

(3) Nothing in this section prohibits a corrections agency or department from considering all prior and current convictions in determining whether the possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

*Sec. 803 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 804. A violation of any provision or section of this chapter that relates to the licensing and regulation of producers, processors, or dispensers, where no other penalty is provided for, and the violation of any rule adopted under this chapter constitutes a misdemeanor.*

*Sec. 804 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 805. (1) Every licensed producer or processor of cannabis products 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 thousand dollars for every such violation. Each violation shall be a separate and distinct offense.*

(2) Every licensed dispenser who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the secretary, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(3) 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. 805 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 806. The department of agriculture or the department of health, as the case may be, must immediately suspend any certification of licensure issued under this chapter if the holder of the certificate has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.*

*Sec. 806 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 807. The department of agriculture or the department of health, as the case may be, must suspend the certification of*

licensure of any person who has been certified by a lending agency and reported to the appropriate department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the department of agriculture or the department of health, as the case may be, must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the appropriate department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement is automatic upon receipt of the notice and payment of any reinstatement fee.

**Sec. 807 was vetoed. See message at end of chapter.*

**PART IX
SECURE REGISTRATION OF QUALIFYING PATIENTS,
DESIGNATED PROVIDERS, AND LICENSED PRODUCERS,
PROCESSORS, AND DISPENSERS**

****NEW SECTION.** Sec. 901. (1) By January 1, 2013, the department of health shall, in consultation with the department of agriculture, adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system that allows:*

(a) A peace officer to verify at any time whether a health care professional has registered a person as either a qualifying patient or a designated provider; and

(b) A peace officer to verify at any time whether a person, location, or business is licensed by the department of agriculture or the department of health as a licensed producer, licensed processor of cannabis products, or licensed dispenser.

(2) The department of agriculture must, in consultation with the department of health, create and maintain a secure and confidential list of persons to whom it has issued a license to produce cannabis for medical use or a license to process cannabis products, and the physical addresses of the licensees' production and processing facilities. The list must meet the requirements of subsection (9) of this section and be transmitted to the department of health to be included in the registry established by this section.

(3) The department of health must, in consultation with the department of agriculture, create and maintain a secure and confidential list of the persons to whom it has issued a license to dispense cannabis for medical use that meets the requirements of subsection (9) of this section and must be included in the registry established by this section.

(4) Before seeking a nonvehicle search warrant or arrest warrant, a peace officer investigating a cannabis-related incident must make reasonable efforts to ascertain whether the location or person under investigation is registered in the registration system, and include the results of this inquiry in the affidavit

submitted in support of the application for the warrant. This requirement does not apply to investigations in which:

(a) The peace officer has observed evidence of an apparent cannabis operation that is not a licensed producer, processor of cannabis products, or dispenser;

(b) The peace officer has observed evidence of theft of electrical power;

(c) The peace officer has observed evidence of illegal drugs other than cannabis at the premises;

(d) The peace officer has observed frequent and numerous short-term visits over an extended period that are consistent with commercial activity, if the subject of the investigation is not a licensed dispenser;

(e) The peace officer has observed violent crime or other demonstrated dangers to the community;

(f) The peace officer has probable cause to believe the subject of the investigation has committed a felony, or a misdemeanor in the officer's presence, that does not relate to cannabis; or

(g) The subject of the investigation has an outstanding arrest warrant.

(5) Law enforcement may access the registration system only in connection with a specific, legitimate criminal investigation regarding cannabis.

(6) Registration in the system shall be optional for qualifying patients and designated providers, not mandatory, and registrations are valid for one year, except that qualifying patients must be able to remove themselves from the registry at any time. For licensees, registrations are valid for the term of the license and the registration must be removed if the licensee's license is expired or revoked. The department of health must adopt rules providing for registration renewals and for removing expired registrations and expired or revoked licenses from the registry.

(7) Fees, including renewal fees, for qualifying patients and designated providers participating in the registration system shall be limited to the cost to the state of implementing, maintaining, and enforcing the provisions of this section and the rules adopted to carry out its purposes. The fee shall also include any costs for the department of health to disseminate information to employees of state and local law enforcement agencies relating to whether a person is a licensed producer, processor of cannabis products, or dispenser, or that a location is the recorded address of a license producer, processor of cannabis products, or dispenser, and for the dissemination of log records relating to such requests for information to the subjects of those requests. No fee may be charged to local law enforcement agencies for accessing the registry.

(8) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include, but not be limited to, qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the University of Washington computer science and engineering security and privacy research lab.

(9) The registration system shall meet the following requirements:

(a) Any personally identifiable information included in the registration system must be "nonreversible," pursuant to definitions and standards set forth by the national institute of standards and technology;

(b) Any personally identifiable information included in the registration system must not be susceptible to linkage by use of data external to the registration system;

(c) The registration system must incorporate current best differential privacy practices, allowing for maximum accuracy of registration system queries while minimizing the chances of identifying the personally identifiable information included therein; and

(d) The registration system must be upgradable and updated in a timely fashion to keep current with state of the art privacy and security standards and practices.

(10) The registration system shall maintain a log of each verification query submitted by a peace officer, including the peace officer's name, agency, and identification number, for a period of no less than three years from the date of the query. Personally identifiable information of qualifying patients and designated providers included in the log shall be confidential and exempt from public disclosure, inspection, or copying under chapter 42.56 RCW: PROVIDED, That:

(a) Names and other personally identifiable information from the list may be released only to:

(i) Authorized employees of the department of agriculture and the department of health as necessary to perform official duties of either department; or

(ii) Authorized employees of state or local law enforcement agencies, only as necessary to verify that the person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser, and only after the inquiring employee has provided adequate identification. Authorized employees who obtain personally identifiable information under this subsection may not release or use the information for any purpose other than verification that a person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser;

(b) Information contained in the registration system may be released in aggregate form, with all personally identifying information redacted, for the purpose of statistical analysis and oversight of agency performance and actions;

(c) The subject of a registration query may appear during ordinary department of health business hours and inspect or copy log records relating to him or her upon adequate proof of identity; and

(d) The subject of a registration query may submit a written request to the department of health, along with adequate proof of identity, for copies of log records relating to him or her.

(11) This section does not prohibit a department of agriculture employee or a department of health employee from contacting state or local law enforcement for assistance during an emergency or while performing his or her duties under this chapter.

(12) Fees collected under this section must be deposited into the health professions account under RCW 43.70.320.

*Sec. 901 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 902.** *A new section is added to chapter 42.56 RCW to read as follows:*

Records containing names and other personally identifiable information relating to qualifying patients, designated providers, and persons licensed as producers or dispensers of cannabis for medical use, or as processors of cannabis products, under section 901 of this act are exempt from disclosure under this chapter.

*Sec. 902 was vetoed. See message at end of chapter.

PART X EVALUATION

NEW SECTION. Sec. 1001. (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of this act and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of this act and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

- (a) Qualifying patients' access to an adequate source of cannabis for medical use;
- (b) Qualifying patients' access to a safe source of cannabis for medical use;
- (c) Qualifying patients' access to a consistent source of cannabis for medical use;
- (d) Qualifying patients' access to a secure source of cannabis for medical use;
- (e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;
- (f) Diversion of cannabis intended for medical use to nonmedical uses;
- (g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;
- (h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;
- (i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and
- (j) Whether the health care professionals making authorizations reside in this state or out of this state.

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted.

NEW SECTION. Sec. 1002. *A new section is added to chapter 28B.20 RCW to read as follows:*

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis.

PART XI CONSTRUCTION

NEW SECTION. Sec. 1101. (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

NEW SECTION. Sec. 1102. (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

(2) Counties may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town: Zoning requirements, business licensing requirements, and health and safety requirements. Nothing in this act is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

NEW SECTION. Sec. 1103. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

***NEW SECTION. Sec. 1104.** *In the event that the federal government authorizes the use of cannabis for medical purposes, within a year of such action, the joint legislative audit and review committee shall conduct a program and fiscal review of the cannabis production and dispensing programs established in this chapter. The review shall consider whether a distinct cannabis production and dispensing system continues to be necessary*

when considered in light of the federal action and make recommendations to the legislature.

*Sec. 1104 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 1105. (1)(a) The arrest and prosecution protections established in section 401 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in sections 402, 405, 406, and 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040 and sections 403 and 413 of this act do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision.

Sec. 1106. RCW 69.51A.900 and 1999 c 2 s 1 are each amended to read as follows:

This chapter may be known and cited as the Washington state medical use of (~~marijuana~~) cannabis act.

PART XII MISCELLANEOUS

***NEW SECTION. Sec. 1201.** (1) *The legislature recognizes that there are cannabis producers and cannabis dispensaries in operation as of the effective date of this section that are unregulated by the state and who produce and dispense cannabis for medical use by qualifying patients. The legislature intends that these producers and dispensaries become licensed in accordance with the requirements of this chapter and that this licensing provides them with arrest protection so long as they remain in compliance with the requirements of this chapter and the rules adopted under this chapter. The legislature further recognizes that cannabis producers and cannabis dispensaries in current operation are not able to become licensed until the department of agriculture and the department of health adopt rules and, consequently, it is likely they will remain unlicensed until at least January 1, 2013. These producers and dispensary owners and operators run the risk of arrest between the effective date of this section and the time they become licensed. Therefore, the legislature intends to provide them with an affirmative defense if they meet the requirements of this section.*

(2) *If charged with a violation of state law relating to cannabis, a producer of cannabis or a dispensary and its owners and operators that are engaged in the production or dispensing of cannabis to a qualifying patient or who assists a qualifying patient in the medical use of cannabis is deemed to have established an affirmative defense to such charges by proof of compliance with this section.*

(3) *In order to assert an affirmative defense under this section, a cannabis producer or cannabis dispensary must:*

(a) *In the case of producers, solely provide cannabis to cannabis dispensaries for the medical use of cannabis by qualified patients;*

(b) *In the case of dispensaries, solely provide cannabis to qualified patients for their medical use;*

(c) *Be registered with the secretary of state as of May 1, 2011;*

(d) *File a letter of intent with the department of agriculture or the department of health, as the case may be, asserting that the producer or dispenser intends to become licensed in accordance with this chapter and rules adopted by the appropriate department; and*

(e) *File a letter of intent with the city clerk if in an incorporated area or to the county clerk if in an unincorporated area stating they operate as a producer or dispensary and that they comply with the provisions of this chapter and will comply with subsequent department rule making.*

(4) *Upon receiving a letter of intent under subsection (3) of this section, the department of agriculture, the department of health, and the city clerk or county clerk must send a letter of acknowledgment to the producer or dispenser. The producer and dispenser must display this letter of acknowledgment in a prominent place in their facility.*

(5) *Letters of intent filed with a public agency, letters of acknowledgement sent from those agencies, and other materials related to such letters are exempt from public disclosure under chapter 42.56 RCW.*

(6) *This section expires upon the establishment of the licensing programs of the department of agriculture and the department of health and the commencement of the issuance of licenses for dispensers and producers as provided in this chapter. The department of health and the department of agriculture shall notify the code reviser when the establishment of the licensing programs has occurred.*

**Sec. 1201 was vetoed. See message at end of chapter.*

****NEW SECTION. Sec. 1202. A new section is added to chapter 42.56 RCW to read as follows:***

The following information related to cannabis producers and cannabis dispensaries are exempt from disclosure under this section:

(1) *Letters of intent filed with a public agency under section 1201 of this act;*

(2) *Letters of acknowledgement sent from a public agency under section 1201 of this act;*

(3) *Materials related to letters of intent and acknowledgement under section 1201 of this act.*

**Sec. 1202 was vetoed. See message at end of chapter.*

****NEW SECTION. Sec. 1203. (1)(a) On July 1, 2015, the department of health shall report the following information to the state treasurer:***

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW between the effective date of this section and June 30, 2015; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act between the effective date of this section and June 30, 2015.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

(2)(a) Annually, beginning July 1, 2016, the department of health shall report the following information to the state treasurer:

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW for the preceding fiscal year; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act during the preceding fiscal year.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

*Sec. 1203 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 1204. RCW 69.51A.080 (Adoption of rules by the department of health—Sixty-day supply for qualifying patients) and 2007 c 371 s 8 are each repealed.

NEW SECTION. Sec. 1205. Sections 402 through 411, 413, 601 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through 1105, and 1201 of this act are each added to chapter 69.51A RCW.

***NEW SECTION. Sec. 1206.** *Section 1002 of this act takes effect January 1, 2013.*

*Sec. 1206 was vetoed. See message at end of chapter.

Passed by the Senate April 21, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 entitled:

"AN ACT Relating to medical use of cannabis."

In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions. The voters also provided patients' physicians and caregivers with defenses to state law prosecutions.

I fully support the purpose of Initiative 692, and in 2007, I signed legislation that expanded the ability of a patient to receive assistance from a designated provider in the medical use of marijuana, and added conditions and diseases for which medical marijuana could be used.

Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their

designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

Our state legislature may remove state criminal and civil penalties for activities that assist persons suffering from debilitating or terminal conditions. While such activities may violate the federal Controlled Substances Act, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. However, absent congressional action, state laws will not protect an individual from legal action by the federal government.

Qualifying patients and designated providers can evaluate the risk of federal prosecution and make choices for themselves on whether to use or assist another in using medical marijuana. The United States Department of Justice has made the wise decision not to use federal resources to prosecute seriously ill patients who use medical marijuana.

However, the sections in Part VI, Part VII, and Part VIII of Engrossed Second Substitute Senate Bill 5073 would direct employees of the state departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis. These sections would open public employees to federal prosecution, and the United States Attorneys have made it clear that state law would not provide these individuals safe harbor from federal prosecution. No state employee should be required to violate federal criminal law in order to fulfill duties under state law. For these reasons, I have vetoed Sections 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806 and 807 of Engrossed Second Substitute Senate Bill 5073.

In addition, there are a number of sections of Engrossed Second Substitute Senate Bill 5073 that are associated with or dependent upon these licensing sections. Section 201 sets forth definitions of terms. Section 412 adds protections for licensed producers, processors and dispensers. Section 901 requires the Department of Health to develop a secure registration system for licensed producers, processors and dispensers. Section 1104 would require a review of the necessity of the cannabis production and dispensing system if the federal government were to authorize the use of cannabis for medical purposes. Section 1201 applies to dispensaries in current operation in the interim before licensure, and Section 1202 exempts documents filed under Section 1201 from disclosure. Section 1203 requires the department of health to report certain information related to implementation of the vetoed sections. Because I have vetoed the licensing provisions, I have also vetoed Sections 201, 412, 901, 1104, 1201, 1202 and 1203 of Engrossed Second Substitute Senate Bill 5073.

Section 410 would require owners of housing to allow the use of medical cannabis on their property, putting them in potential conflict with federal law. For this reason, I have vetoed Section 410 of Engrossed Second Substitute Senate Bill 5073.

Section 407 would permit a nonresident to engage in the medical use of cannabis using documentation or authorization issued under other state or territorial laws. This section would not require these other state or territorial laws to meet the same standards for health care professional authorization as required by Washington law. For this reason, I have vetoed Section 407 of Engrossed Second Substitute Senate Bill 5073.

Section 411 would provide that a court may permit the medical use of cannabis by an offender, and exclude it as a ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition or dispositional order. The correction agency or department responsible for the person's supervision is in the best position to evaluate an individual's circumstances and medical use of cannabis. For this reason, I have vetoed Section 411 of Engrossed Second Substitute Senate Bill 5073.

I am approving Section 1002, which authorizes studies and medical guidelines on the appropriate administration and use of cannabis. Section 1206 would make Section 1002 effective January 1, 2013. I have vetoed Section 1206 to provide the discretion to begin efforts at an earlier date.

Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.

I am also open to legislation that establishes a secure and confidential registration system to provide arrest and seizure protections under state law to qualifying patients and those who assist them. Unfortunately, the provisions of Section 901 that would provide a registry for qualifying patients and designated providers beginning in January 2013 are intertwined with requirements for registration of licensed commercial producers, processors and dispensers of cannabis. Consequently, I have vetoed section 901 as noted above. Section 101 sets forth the purpose of the registry, and Section 902 is contingent on the registry. Without a registry, these sections are not meaningful. For this reason, I have vetoed Sections 101 and 902 of Engrossed Second Substitute Senate Bill 5073. I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

With the exception of Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 is approved."

CHAPTER 182

[House Bill 1031]

BALLOT ENVELOPES

AN ACT Relating to ballot envelopes; and amending RCW 29A.40.091.

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

Sec. 1. RCW 29A.40.091 and 2010 c 125 s 1 are each amended to read as follows:

The county auditor shall send each voter a ballot, a security envelope in which to (~~seal~~) conceal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and

optional telephone number. For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

Passed by the House February 23, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 183

[House Bill 1040]

ELECTRONIC SIGNATURES AND NOTICES

AN ACT Relating to the use of electronic signatures and notices; and amending RCW 19.09.085, 19.34.231, 23B.01.500, 23B.01.510, 24.03.400, 24.06.445, and 24.12.051.

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

Sec. 1. RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Registration under this chapter shall be effective for one year or longer, as established by the secretary.

(2) Reregistration required under RCW 19.09.075 or 19.09.079 shall be submitted to the secretary no later than the date established by the secretary by rule.

(3) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4) The secretary shall notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification (~~shall~~) may be by postal or electronic mail, sent at least sixty days prior to the expiration of their current registration. Failure to register shall not be excused by a failure of the secretary to (~~mail~~) send the notice or by an entity's failure to receive the notice.

Sec. 2. RCW 19.34.231 and 1999 c 287 s 12 are each amended to read as follows:

(1) If a signature of a unit of state or local government, including its appropriate officers or employees, is required by statute, administrative rule, court rule, or requirement of the office of financial management, that unit of state or local government (~~shall~~) may become a subscriber to a certificate

issued by a licensed certification authority for purposes of conducting official public business with electronic records.

(2) A city or county may become a licensed certification authority under RCW 19.34.100 for purposes of providing services to local government, if authorized by ordinance adopted by the city or county legislative authority.

(3) A unit of state government, except the secretary and the department of information services, may not act as a certification authority.

Sec. 3. RCW 23B.01.500 and 1989 c 165 s 16 are each amended to read as follows:

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send, by postal or electronic mail as elected by the domestic corporation, to each domestic corporation, at its registered office within the state, ~~((by first class mail,))~~ or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation ~~((shall))~~ fails to pay its annual license fee or to file its annual report it ~~((shall be))~~ is dissolved and ceases to exist. Failure of the secretary of state to ~~((mail))~~ provide any such notice ~~((shall))~~ does not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

Sec. 4. RCW 23B.01.510 and 1990 c 178 s 3 are each amended to read as follows:

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send by postal or electronic mail, as elected by the foreign corporation, to each foreign corporation qualified to do business in this state, ~~((by first class mail))~~ addressed to its registered office within this state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it ~~((shall))~~ fails to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to ~~((mail))~~ send any such notice ~~((shall))~~ does not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

Sec. 5. RCW 24.03.400 and 1993 c 356 s 11 are each amended to read as follows:

Not less than thirty days prior to a corporation's renewal date, or by December 1 of each year for a nonstaggered renewal, the secretary of state shall ~~((mail))~~ send to each domestic and foreign corporation, by ~~((first class mail addressed to its registered office))~~ postal or electronic mail, as elected by the domestic or foreign corporation, addressed to its registered office or to an electronic address designated by the corporation in a record retained by the

secretary of state, a notice that its annual or biennial report must be filed as required by this chapter, and stating that if it fails to file its annual or biennial report it ~~((shall be))~~ is dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to ~~((mail))~~ send any such notice ~~((shall))~~ does not relieve a corporation from its obligation to file the annual or biennial reports required by this chapter. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

Such report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, or on an annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

If the secretary of state finds that such report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

Sec. 6. RCW 24.06.445 and 1993 c 356 s 23 are each amended to read as follows:

An annual or biennial report of each domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year or on such annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates. Proof to the satisfaction of the secretary of state that the report was deposited in the United States mails, in a sealed envelope, properly addressed to the secretary of state, with postage prepaid thereon, prior to the corporation's annual or biennial renewal date, shall be deemed compliance with this requirement.

If the secretary of state finds that a report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

Failure of the secretary of state to ~~((mail))~~ send any such notice shall not relieve a corporation from its obligation to file the annual reports required by this chapter.

Sec. 7. RCW 24.12.051 and 2009 c 437 s 14 are each amended to read as follows:

(1) Not less than thirty days prior to a corporation sole's renewal date, the secretary of state shall ~~((mail))~~ send to each corporation sole, by ~~((first-class))~~ postal or electronic mail, as elected by the corporation sole, addressed to its registered office, or to an electronic address designated by the corporation sole, in a record retained by the secretary of state, a notice that its annual report must be filed as required by this chapter, and stating that if it fails to file its annual report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to ~~((mail))~~ send the notice does not relieve a corporation sole from its obligation to file the annual reports required by this chapter. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

(2)(a) The report of a corporation sole shall be delivered to the secretary of state on an annual renewal date as the secretary of state may establish. The

secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

(b) If the secretary of state finds that the report substantially conforms to the requirements of this chapter, the secretary of state shall file that report.

Passed by the House April 14, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 184

[House Bill 1106]

SEASHORE CONSERVATION AREA—SALE, LEASE, DISPOSAL OF LAND

AN ACT Relating to sale, lease, and disposal of lands within the Seashore Conservation Area; and amending RCW 79A.05.630.

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

Sec. 1. RCW 79A.05.630 and 2000 c 11 s 50 are each amended to read as follows:

Lands within the Seashore Conservation Area shall not be sold, leased, or otherwise disposed of, except as (~~herein~~) provided in this section.

(1) The commission may, under authority granted in RCW 79A.05.175 and 79A.05.180, exchange state park lands in the Seashore Conservation Area for lands of equal value to be managed by the commission consistent with this chapter. Only state park lands lying east of the Seashore Conservation Line, as it is located at the time of exchange, may be so exchanged.

(2) The commission may, under authority granted in RCW 79A.05.178, directly dispose of up to five contiguous acres of real property, without public auction, to resolve trespass, property ownership disputes, and boundary adjustments with adjacent property owners. Real property to be disposed of under this subsection may be disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state. All conveyance documents shall be executed by the governor. All proceeds from the disposal of the property shall be paid into the parkland acquisition account and proceeds received pursuant to any sale under this subsection shall be reinvested in real property located inside or within one mile of the Seashore Conservation Area.

(3) The department of natural resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas(~~(= PROVIDED,=)~~) except that oil drilling rigs and equipment (~~(with)~~) shall not be placed on the Seashore Conservation Area or state-owned accreted lands.

Sale of sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the commission to be reasonable, and not generally harmful or destructive to the character of the land(~~(= PROVIDED, That)~~). The commission may grant leases and permits for the removal of sands for construction purposes from any lands within the Seashore Conservation Area if found by the commission to be reasonable and not generally harmful or destructive to the character of the land(=

~~PROVIDED FURTHER, That~~). Net income from such leases shall be deposited in the state parks renewal and stewardship account.

Passed by the House February 28, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 185

[Second Substitute House Bill 1163]

K-12 SCHOOLS—BULLYING PREVENTION

AN ACT Relating to harassment, intimidation, and bullying prevention; amending RCW 28A.230.095; adding a new section to chapter 28A.300 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that having updated school district policies and procedures is a step in the right direction for preventing bullying, intimidation, and harassment, but more steps are needed. A work group could help to maintain focus and attention on antibullying and antiharassment, as well as monitor progress. In addition, students' knowledge and understanding of two key correlates of bullying and harassment, depression and youth suicide, could be enhanced through instruction and assessments that address mental health and suicide prevention.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction and the office of the education ombudsman shall convene a work group on school bullying and harassment prevention to develop, recommend, and implement strategies to improve school climate and create respectful learning environments in all public schools in Washington. The superintendent of public instruction or a designee shall serve as the chair of the work group.

(2) The work group shall:

(a) Consider whether additional disaggregated data should be collected regarding incidents of bullying and harassment or disciplinary actions and make recommendations to the office of the superintendent of public instruction for collection of such data;

(b) Examine possible procedures for anonymous reporting of incidents of bullying and harassment;

(c) Identify curriculum and best practices for school districts to improve school climate, create respectful learning environments, and train staff and students in de-escalation and intervention techniques;

(d) Identify curriculum and best practices for incorporating instruction about mental health, youth suicide prevention, and prevention of bullying and harassment;

(e) Recommend best practices for informing parents about the harassment, intimidation, and bullying prevention policy and procedure under RCW 28A.300.285 and involving parents in improving school climate;

(f) Recommend training for district personnel who are designated as the primary contact regarding the policy and procedure and for school resource officers and other school security personnel;

(g) Recommend educator preparation and certification requirements in harassment, intimidation, and bullying prevention and de-escalation and intervention techniques for teachers, educational staff associates, and school administrators;

(h) Examine and recommend policies for discipline of students and staff who harass, intimidate, or bully; and

(i) In collaboration with the state board for community and technical colleges, examine and recommend policies to protect K-12 students attending community and technical colleges from harassment, intimidation, and bullying.

(3) The work group must include representatives from the state board of education, the Washington state parent teacher association, the Washington state association of school psychologists, school directors, school administrators, principals, teachers, school counselors, classified school staff, youth, community organizations, and parents.

(4) The work group shall submit a biennial progress and status report to the governor and the education committees of the legislature, beginning December 1, 2011, with additional reports by December 1, 2013, and December 1, 2015.

(5) The work group is terminated effective January 1, 2016.

NEW SECTION. Sec. 3. The office of the superintendent of public instruction shall work with state agency and community partners to develop pilot projects to assist schools in implementing youth suicide prevention activities.

NEW SECTION. Sec. 4. (1) The state board for community and technical colleges shall compile and analyze policies and procedures adopted by community and technical colleges regarding harassment, intimidation, and bullying prevention.

(2) The higher education coordinating board shall compile and analyze policies and procedures adopted by four-year institutions of higher education regarding harassment, intimidation, and bullying prevention.

(3) Each board under this section shall submit a report with recommendations for improvements in the policies and procedures to the education and higher education committees of the legislature by December 1, 2011, to include:

(a) Whether additional disaggregated data should be collected regarding incidents of bullying and harassment or disciplinary actions;

(b) Recommendations as to training for institutional personnel who are designated as the primary contact regarding the policy and procedure; and

(c) An examination of and recommendations for policies for disciplining students and staff who harass, intimidate, or bully.

Sec. 5. RCW 28A.230.095 and 2009 c 556 s 8 are each amended to read as follows:

(1) By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies chosen by the district to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and health and fitness. Social studies includes history, geography, civics,

economics, and social studies skills. Health and fitness includes, but is not limited to, mental health and suicide prevention education. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction. The office of the superintendent of public instruction may not require school districts to use a classroom-based assessment in social studies, the arts, and health and fitness to meet the requirements of this section and shall clearly communicate to districts their option to use other strategies chosen by the district.

(2) Beginning with the 2008-09 school year, school districts shall require students in the seventh or eighth grade, and the eleventh or twelfth grade to each complete at least one classroom-based assessment in civics. Beginning with the 2010-11 school year, school districts shall require students in the fourth or fifth grade to complete at least one classroom-based assessment in civics. The civics assessment may be selected from a list of classroom-based assessments approved by the office of the superintendent of public instruction. Beginning with the 2008-09 school year, school districts shall annually submit implementation verification reports to the office of the superintendent of public instruction documenting the use of the classroom-based assessments in civics.

(3) Verification reports shall require school districts to report only the information necessary to comply with this section.

NEW SECTION. Sec. 6. Section 5 of this act takes effect July 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 186

[Engrossed Substitute House Bill 1202]

LIQUOR STORES—ON-PREMISE SAMPLING

AN ACT Relating to on-premise spirits sampling; amending RCW 66.08.050, 66.16.070, and 66.28.040; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The liquor control board shall establish a pilot project to allow spirits sampling in state liquor stores as defined in RCW 66.16.010 and contract stores as defined in RCW 66.04.010(11) for the purpose of promoting the sponsor's products. For purposes of this section, "sponsors" means: A domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310.

(a) The pilot project shall consist of thirty locations with at least six samplings to be conducted at each location between September 1, 2011, and September 1, 2012. However, no state liquor store or contract store may hold more than one spirits sampling per week during the project period.

(b) The pilot project locations shall be determined by the board. Before the board determines which state liquor stores or contract stores will be eligible to participate in the sampling pilot, it shall give:

(i) Due consideration to the location of the state liquor store or contract store with respect to the proximity of places of worship, schools, and public institutions;

(ii) Due consideration to motor vehicle accident data in the proximity of the state liquor store or contract store; and

(iii) Written notice by certified mail of the proposed spirits sampling to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to offer spirits sampling.

(c) Sampling must be conducted under the following conditions:

(i) Sampling may take place only in an area of a state liquor store or contract store in which access to persons under twenty-one years of age is prohibited;

(ii) Samples may be provided free of charge;

(iii) Only persons twenty-one years of age or over may sample spirits;

(iv) Each sample must be one-quarter ounce or less, with no more than one ounce of samples provided per person per day;

(v) Only sponsors may serve samples;

(vi) Any person involved in the serving of such samples must have completed a mandatory alcohol server training program;

(vii) No person who is apparently intoxicated may sample spirits;

(viii) The product provided for sampling must be available for sale at the state liquor store or contract store where the sampling occurs at the time of the sampling; and

(ix) Customers must remain on the state liquor store or contract store premise while consuming samples.

(d) The liquor control board may prohibit sampling at a pilot project location that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the location are having an adverse effect on the reduction of chronic public inebriation in the area.

(e) All other criteria needed to establish and monitor the pilot project shall be determined by the board.

(f) The board shall report on the pilot project to the appropriate committees of the legislature by December 1, 2012. The board's report shall include the results of a survey of liquor store managers and contract liquor store managers.

(2) The liquor control board may adopt rules to implement this section.

Sec. 2. RCW 66.08.050 and 2005 c 151 s 3 are each amended to read as follows:

The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with

this title as the board may require. Sampling on contract store premises is permitted under this act;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language.

Sec. 3. RCW 66.16.070 and 1933 ex.s. c 62 s 10 are each amended to read as follows:

No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises, except for the purposes of conducting on-premise spirits sampling pursuant to the provisions of this act.

Sec. 4. RCW 66.28.040 and 2009 c 373 s 8 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a domestic brewery, microbrewery,

distributor, domestic winery, distiller, certificate of approval holder, 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 domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, 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 that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery 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; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; ~~((and))~~ nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145; and nothing in this section prohibits spirits sampling under this act.

NEW SECTION. Sec. 5. This act expires December 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 187

[Substitute House Bill 1254]

INSTITUTE OF FOREST RESOURCES

AN ACT Relating to the institute of forest resources; amending RCW 76.44.070, 76.44.020, 76.44.030, and 76.44.050; adding new sections to chapter 76.44 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that there are many challenges facing the forest sector, such as climate change, loss of forest cover in rural and urban areas, forest health and fire risks, the development of environmental service markets, the enhancement of habitat and biodiversity, timber and water supply, restoration of forest ecosystems, and the economic health of forest-dependent communities that rely on the retention of working forests.

(2) The legislature further finds that these forest issues, which occur in both rural and urban environments, and the approaches taken to address the issues, transcend the expertise and mission of the University of Washington school of forest resources and the associated centers and cooperatives. While each of these centers and cooperatives contribute expertise and resources, the structure and continuity for the integrated, interdisciplinary approach needed to address these complex issues is lacking.

(3) It is the intent of the legislature for the institute of forest resources to provide the structure and continuity needed by drawing contributions from the associated centers and cooperatives into a more consolidated, collaborative, interdisciplinary, and integrated process that is responsive to the critical issues confronting the forest sector.

Sec. 2. RCW 76.44.070 and 2010 c 188 s 2 are each amended to read as follows:

The legislature finds that there are many issues facing the forest sector, such as climate change, forest health and fire, carbon accounting, habitat and diversity, timber and water supplies, economic competitiveness, and the economic health of forest dependent communities. Enhancing the capability to effectively address these forest issues is critical to the state of Washington. To meet this need, the University of Washington school of forest resources will continue to work with the various interests concerned with the state's forest resources, including the legislature, state and federal governments, environmental organizations, local communities, the timber industry, and tribes, to improve these entities' ability to competitively recruit, educate, and train a high quality workforce. In order to meet these goals, it is important to our state, and in particular the University of Washington, to continue to have strong undergraduate and graduate programs in forestry and natural resources to provide well-trained professionals to meet workforce needs.

Sec. 3. RCW 76.44.020 and 1988 c 81 s 21 are each amended to read as follows:

The institute of forest resources shall be administered and directed by the ~~((dean of the college))~~ director of the school of forest resources ~~((of))~~ at the University of Washington ~~((who shall also be the director of the institute)).~~

Sec. 4. RCW 76.44.030 and 1979 c 50 s 5 are each amended to read as follows:

(1) The institute of forest resources shall pursue coordinated research and education related to the forest ~~((resource))~~ sector and its multiple ~~((use))~~ components, including ~~((its))~~:

(a) Forest conservation, restoration, sustainable management, and utilization; ~~((its))~~

(b) The evaluation of the economic, ecological, and societal value of forest land ((use and the maintenance of its)) in both the rural and urban environment;

(c) The manufacture and marketing of forest products, including timber products, nontimber products, environmental services, and the provision of recreation and aesthetic values.

(2) The institute of forest resources must seek to provide a framework for identifying, prioritizing, funding, and conducting interdisciplinary research critical to the forest sector and the development of integrated, synthesized information and decision support tools that improve the understanding of complex forestry issues for stakeholders, policymakers, and other interested parties.

(3) In pursuit of these objectives, the institute of forest resources is authorized to cooperate, when cooperation advances the objectives listed in this section, with other entities, including but not limited to:

(a) Universities(,);

(b) State and federal agencies((, industrial institutions,));

(c) Conservation and environmental organizations;

(d) Community and urban forestry organizations; and

(e) Domestic or foreign((, where such cooperation advances these objectives)) industrial and business institutions.

Sec. 5. RCW 76.44.050 and 1979 c 50 s 7 are each amended to read as follows:

(1) The institute ((is authorized to)) of forest resources may solicit ((and/or accept funds through)) gifts, grants, ((contracts, or institutional consulting arrangements for the prosecution of any research or education activity which it may undertake in pursuit of its objectives)) conveyances, bequests, and devices, including both real or personal property, in trust or otherwise, to be directed to the institute for carrying out the objectives of the institute as provided in this chapter.

(2) The institute of forest resources may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources deemed appropriate by the director of the institute.

(3) The institute of forest resources may utilize separately appropriated funds of the University of Washington for the institute's operations and activities.

NEW SECTION. Sec. 6. A new section is added to chapter 76.44 RCW to read as follows:

(1) The director of the school of forest resources at the University of Washington may, at the discretion of the director, appoint and maintain an eleven-member policy advisory committee to advise the director on policies for the institute of forest resources that are consistent with the institute's objectives as provided in this chapter.

(2) If activated, the membership of the policy advisory committee must represent, to the extent possible, the various interests concerned with the institute of forest resources, including state and federal agencies, tribal governments, conservation and environmental organizations, urban forestry interests, rural communities, industry, and business.

(3) Members of the advisory committee may not receive any salary or other compensation for service on the advisory committee. However, each member may be compensated, at the discretion of the director of the institute, for each day in actual attendance at or traveling to and from meetings of the advisory committee in accordance with RCW 43.03.220 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 7. A new section is added to chapter 76.44 RCW to read as follows:

The director of the school of forest resources at the University of Washington shall coordinate the various cooperatives and centers within the school of forest resources to promote a holistic, efficient, and integrated approach that broadens the research and outreach programs and addresses issues facing the forest sector.

Passed by the House April 13, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 188

[Substitute House Bill 1257]

INSURER INVESTMENTS

AN ACT Relating to adopting the investments of insurers model act; amending RCW 48.13.350; reenacting and amending RCW 42.56.400; adding new sections to chapter 48.13 RCW; creating a new section; repealing RCW 48.13.010, 48.13.020, 48.13.030, 48.13.040, 48.13.050, 48.13.060, 48.13.070, 48.13.080, 48.13.090, 48.13.100, 48.13.110, 48.13.120, 48.13.125, 48.13.130, 48.13.140, 48.13.150, 48.13.160, 48.13.170, 48.13.180, 48.13.190, 48.13.200, 48.13.210, 48.13.218, 48.13.220, 48.13.230, 48.13.240, 48.13.250, 48.13.260, 48.13.265, 48.13.270, 48.13.273, 48.13.275, 48.13.280, 48.13.285, 48.13.290, and 48.13.340; and providing an effective date.

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

NEW SECTION. Sec. 1. (1) The purpose of this act is to protect and to further the interests of insureds, creditors, and the general public by providing, with minimum interference with management initiative and judgment, prudent standards for the development and administration of insurer investment programs.

(2) This act and the rules adopted to interpret and implement it apply to domestic insurers, United States branches of alien insurers entered through this state, alien insurers admitted and using this state as their port of entry, domestic fraternal benefit societies formed pursuant to chapter 48.36A RCW, domestic health care service contractors formed pursuant to chapter 48.44 RCW, domestic health maintenance organizations formed pursuant to chapter 48.46 RCW, and domestic self-funded multiple employer welfare arrangements formed pursuant to chapter 48.125 RCW.

(3) Separate accounts established in accordance with RCW 48.18A.020 shall be evaluated separately pursuant to that section.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Derivative instrument" means an item appropriately reported in schedule DB (derivative instruments) or schedule DC (insurance futures and

insurance futures options) of an insurer's statutory financial statement or successor schedules, pursuant to applicable annual statement instructions or statutory accounting guidelines.

(2) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(3) "Income generation" means a derivative transaction involving the writing of covered options, caps, or floors that is intended to generate income or enhance return.

(4) "Leverage" means the relationship of insurance and investment risks to capital and surplus as defined by the national association of insurance commissioners insurance regulatory information system and its other financial analysis solvency tools and reports.

(5) "Lower grade investment" means a rated credit instrument or debt-like preferred stock rated 4, 5, or 6 by the securities valuation office of the national association of insurance commissioners or any successor office.

(6) "Medium grade investment" means a rated credit instrument or debt-like preferred stock rated 3 by the securities valuation office of the national association of insurance commissioners or any successor office.

(7) "Minimum asset requirement" is the sum of an insurer's liabilities and its minimum financial security benchmark.

(8) "Minimum financial security benchmark" is the amount an insurer is required to have under section 3 of this act.

(9) "Mutual fund" means a mutual fund or exchange traded fund registered with the securities and exchange commission of the United States under the investment company act of 1940.

(10) "Rated by the securities valuation office" means any security that is directly rated by the securities valuation office or that is given an equivalent filing exempt rating as prescribed in the purposes and procedures manual of the national association of insurance commissioners securities valuation office.

(11) "Replication" means a derivative transaction involving one or more derivative instruments being used to modify the cash flow characteristics of one or more investments held by an insurer in a manner so that the aggregate cash flows of the derivative instruments and investments reproduce the cash flows of another investment having a higher risk-based capital charge than the risk-based capital charge of the original instruments or investments.

(12) "Securities valuation office listed mutual fund" means a money market mutual fund or short-term bond fund that is registered with the United States securities and exchange commission under the investment company act of 1940, and that has been determined by the national association of insurance commissioners securities valuation office to be eligible for special reserve and reporting treatment, other than as common stock.

(13) "Surplus" means the excess of admitted assets over all liabilities.

(14) "United States government securities" means any security defined in the purposes and procedures manual of the national association of insurance commissioners securities valuation office as a United States government security.

NEW SECTION. Sec. 3. (1) Minimum financial security benchmark.

(a) Unless otherwise established in accordance with (b) and (c) of this subsection, the amount of the minimum financial security benchmark for an insurer shall be the greater of:

(i) The authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320; or

(ii) The minimum capital or minimum surplus required by statute or rule for maintenance of an insurer's certificate of authority, certificate of registration, or other form of authorization to transact business pursuant to Title 48 RCW.

(b) The commissioner may, in accordance with the factors in subsection (2)(b) of this section, establish by order a minimum financial security benchmark to apply to a specific insurer provided it is not less than the amount determined by (a) of this subsection, in the event the insurer falls below three and one-half times the authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320.

(c) The commissioner may establish by rule a minimum financial security benchmark that is a multiple of authorized control level risk-based capital to apply to any class of insurers provided the amount established by the rule is not less than the amount determined in (a) of this subsection.

(2) The commissioner shall determine the amount of surplus that shall constitute an insurer's minimum financial security benchmark, as an amount that will provide reasonable security against contingencies affecting the insurer's financial position that are not fully covered by reserves or by reinsurance.

(a) Types of contingencies. The commissioner shall consider the risks of:

(i) Increases in the frequency or severity of losses beyond the levels contemplated by the rates charged;

(ii) Increases in expenses beyond those contemplated by the rates charged;

(iii) Decreases in the value of or the return on invested assets below those planned on;

(iv) Changes in economic conditions that would make liquidity more important than contemplated and would force untimely sale of assets or prevent timely investments;

(v) Currency devaluation to which the insurer may be subject;

(vi) Diminished prospects for performance of reinsurers' or other counter parties' obligations; and

(vii) Any other contingencies the commissioner can identify that may affect the insurer's operations.

(b) Controlling factors. In making the determination under this subsection, the commissioner shall take into account the following factors:

(i) The most reliable information available as to the magnitude of the various risks under (a) of this subsection;

(ii) The extent to which the risks in (a) of this subsection are independent of each other or are related, and whether any dependency is direct or inverse;

(iii) The insurer's recent history of profits or losses;

(iv) The extent to which the insurer has provided protection against the contingencies in other ways than the establishment of surplus; including redundancy of premiums, adjustability of contracts under their terms, investment valuation reserves whether voluntary or mandatory, appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of security,

reserve adjustments in recognition of previous rate inadequacies, contingency or catastrophe reserves, diversification of assets, and underwriting risks;

(v) Independent judgments of the soundness of the insurer's operations, as evidenced by the ratings of reliable professional financial reporting services; and

(vi) Any other relevant factors.

NEW SECTION. Sec. 4. (1) Subject to the provisions of this chapter, an insurer may loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with its investments, property, and other assets to the same extent as any other person or corporation under the laws of this state and of the United States.

(2) With respect to all of the insurer's investments, the board of directors of an insurer shall exercise the judgment and care, under the circumstances then prevailing, that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments shall be of sufficient value, liquidity, and diversity to assure the insurer's ability to meet its outstanding obligations based on reasonable assumptions as to new business production for current lines of business. As part of its exercise of judgment and care, the board of directors shall take into account the prudence evaluation criteria of section 5 of this act.

(3) The insurer shall establish and implement internal controls and procedures to assure compliance with investment policies and procedures to assure that:

(a) The insurer's investment staff and any consultants used are reputable and capable;

(b) A periodic evaluation and monitoring process occurs for assessing the effectiveness of investment policy and strategies;

(c) Management's performance is assessed in meeting the stated objectives within the investment policy; and

(d) Appropriate analyses are undertaken of the degree to which asset cash flows are adequate to meet liability cash flows under different economic environments. These analyses shall be conducted at least annually and make specific reference to economic conditions.

NEW SECTION. Sec. 5. The following factors shall be evaluated by the insurer and considered along with its business in determining whether an investment portfolio or investment policy is prudent; the commissioner shall consider the following factors prior to making a determination that an insurer's investment portfolio or investment policy is not prudent:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The fairness and reasonableness of the terms of an investment considering its probable risk and reward characteristics and relationship to the investment portfolio as a whole;

(5) The extent of the diversification of the insurer's investments among:

(a) Individual investments;

(b) Classes of investments;

(c) Industry concentrations;
(d) Dates of maturity; and
(e) Geographic areas;
(6) The quality and liquidity of investments in affiliates;
(7) The investment exposure to the following risks, quantified in a manner consistent with the insurer's acceptable risk level identified in section 6(8) of this act:

- (a) Liquidity;
 - (b) Credit and default;
 - (c) Systemic (market);
 - (d) Interest rate;
 - (e) Call, prepayment, and extension;
 - (f) Currency;
 - (g) Foreign sovereign; and
 - (h) Leverage;
- (8) The amount of the insurer's assets, capital, and surplus, premium writings, insurance in force, and other appropriate characteristics;
(9) The amount and adequacy of the insurer's reported liabilities;
(10) The relationship of the expected cash flows of the insurer's assets and liabilities, and the risk of adverse changes in the insurer's assets and liabilities;
(11) The adequacy of the insurer's capital and surplus to secure the risks and liabilities of the insurer; and
(12) Any other factors relevant to whether an investment is prudent.

NEW SECTION. Sec. 6. In acquiring, investing, exchanging, holding, selling, and managing investments, an insurer shall establish and follow a written investment policy that shall be reviewed and approved by the insurer's board of directors at least annually. The content and format of an insurer's investment policy are at the insurer's discretion, but shall include written guidelines appropriate to the insurer's business as to the following:

- (1) The delegation and monitoring of policies, procedures, and controls covering all aspects of the investing function;
- (2) Quantified goals and objectives regarding the composition of classes of investments, including maximum internal limits;
- (3) Periodic evaluation of the investment portfolio as to its risk and reward characteristics. This subsection shall not preclude an insurer from the use of modern portfolio theory to manage its investments;
- (4) Professional standards for the individuals making day to day investment decisions to assure that investments are managed in an ethical and capable manner;
- (5) The types of investments to be made and those to be avoided, based on their risk and reward characteristics and the insurer's level of experience with the investments;
- (6) The relationship of classes of investments to the insurer's insurance products and liabilities;
- (7) The manner in which the insurer intends to implement section 5 of this act; and
(8) The level of risk, based on quantitative measures, appropriate for the insurer given the level of capitalization and expertise available to the insurer.

NEW SECTION. **Sec. 7.** The following classes of investments may be counted for the purposes specified in section 11 of this act, whether they are made directly or as a participant in a partnership, joint venture, or limited liability company. Investments in partnerships, joint ventures, and limited liability companies are authorized investments only pursuant to subsection (12) of this section:

(1) Cash in the direct possession of the insurer or on deposit with a financial institution regulated by any federal or state agency of the United States;

(2) Bonds, debt-like preferred stock, and other evidences of indebtedness of governmental units in the United States or Canada, or the instrumentalities of the governmental units, or private business entities domiciled in the United States or Canada, including asset-backed securities and securities valuation office listed mutual funds;

(3) Loans secured by first mortgages, first trust deeds, or other first security interests in real property located in the United States or Canada or secured by insurance against default issued by a government insurance corporation of the United States or Canada or by an insurer authorized to do business in this state;

(4) Common stock or equity-like preferred stock or equity interests in any United States or Canadian business entity, or shares of mutual funds registered with the securities and exchange commission of the United States under the investment company act of 1940, other than securities valuation office listed mutual funds, and, subsidiaries, as defined in RCW 48.31B.005 or 48.31C.010, engaged exclusively in the following businesses:

(a) Acting as an insurance producer, surplus line broker, or title insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the federal investment company act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: PROVIDED, that the aggregate investment by the insurer and its subsidiaries acquired pursuant to this subsection (4)(g) shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

- (k) Owning one or more subsidiary;
 - (i) Insurers, health care service contractors, or health maintenance organizations to the extent permitted by this chapter;
 - (ii) Businesses specified in (a) through (k) of this subsection inclusive; or
 - (iii) Any combination of such insurers and businesses.
- (5) Real property necessary for the convenient transaction of the insurer's business;
- (6) Real property, together with the fixtures, furniture, furnishings, and equipment pertaining thereto in the United States or Canada, which produces or after suitable improvement can reasonably be expected to produce income;
- (7) Loans, securities, or other investments of the types described in subsections (1) through (6) of this section in national association of insurance commissioners securities valuation office 1 debt rated countries other than the United States and Canada;
- (8) Bonds or other evidences of indebtedness of international development organizations of which the United States is a member;
- (9) Loans upon the security of the insurer's own policies in amounts that are adequately secured by the policies and that in no case exceed the surrender values of the policies;
- (10) Tangible personal property under contract of sale or lease under which contractual payments may reasonably be expected to return the principal of and provide earnings on the investment within its anticipated useful life;
- (11) Other investments the commissioner authorizes by rule; and
- (12) Investments not otherwise permitted by this section, and not specifically prohibited by statute, to the extent of not more than five percent of the first five hundred million dollars of the insurer's admitted assets plus ten percent of the insurer's admitted assets exceeding five hundred million dollars.

NEW SECTION. Sec. 8. (1) Class limitations. For the purposes of section 11 of this act, the following limitations on classes of investments apply:

- (a) Investments authorized by section 7(2) of this act, and investments authorized by section 7(7) of this act that are of the types described in section 7(2) of this act;
- (i) The aggregate amount of medium and lower grade investments, twenty percent of its admitted assets;
 - (ii) The aggregate amount of lower grade investments, ten percent of its admitted assets;
 - (iii) The aggregate amount of investments rated 5 or 6 by the securities valuation office, five percent of its admitted assets;
 - (iv) The aggregate amount of investments rated 6 by the securities valuation office, one percent of its admitted assets; or
 - (v) The aggregate amount of medium and lower grade investments that receive as cash income less than the equivalent yield for treasury issues with a comparative average life, one percent of its admitted assets;
- (b) Investments authorized by section 7(3) of this act, forty-five percent of admitted assets in the case of life insurers and twenty-five percent of admitted assets in the case of nonlife insurers;
- (c) Investments authorized by section 7(4) of this act, other than subsidiaries of the types authorized under section 7(4) (a) through (k) of this act, twenty

percent of admitted assets in the case of life insurers and twenty-five percent of admitted assets in the case of nonlife insurers;

(i) Individual investments authorized by section 7(4) of this act, except for subsidiaries, shall be limited to ten percent of the voting interest in any one entity;

(ii) Investments authorized in section 7(4) of this act in one or more subsidiaries shall be limited to the lesser of ten percent of admitted assets or fifty percent of surplus;

(d) Investments authorized by section 7(5) of this act, ten percent of admitted assets;

(e) Investments authorized by section 7(6) of this act, twenty percent of admitted assets in the case of life insurers, and ten percent of admitted assets in the case of nonlife insurers;

(f) Investments authorized by section 7(7) of this act, twenty percent of admitted assets;

(g) Investments authorized by section 7(8) of this act, two percent of admitted assets; and

(h) Investments authorized by section 7(10) of this act, two percent of admitted assets.

(2) Individual limitations. For purposes of determining compliance with section 11 of this act, securities of a single issuer and its affiliates, other than United States government securities and subsidiaries authorized by section 7(4) of this act, shall not exceed three percent of admitted assets in the case of life insurers, and five percent in the case of non-life insurers. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent of the insurer's admitted assets.

(3) Investment subsidiaries. For purposes of determining compliance with the limitations of this section, the admitted portion of assets of subsidiaries authorized by section 7(4) of this act shall be deemed to be owned directly by the insurer and any other investors in proportion to the market value or if there is no market, the reasonable value, of their interest in the subsidiaries.

(4) Effect of quantity limitations. To the extent that investments exceed the limitations specified in subsections (1) and (2) of this section, the excess may be assigned to the investment class authorized in section 7(12) of this act, until that limit is exhausted.

(5) Special rule for mutual funds, pooled investment vehicles, and other investment companies, excluding mutual funds listed on the securities valuation office's United States direct obligations/full faith and credit exempt list, class 1 list, and/or bond fund list (securities valuation office listed mutual funds). At the discretion of the commissioner, as may be deemed necessary in order to determine compliance with this chapter in relation to limitations of particular classes of investments, the commissioner may require that investments in mutual funds, pooled investment vehicles, or other investment companies be treated for purposes of this chapter as if the investor owned directly its proportional share of the assets owned by the mutual fund, pooled investment vehicle, or investment company to the extent such individual non-securities valuation office listed mutual funds, pooled investment vehicles, and other investment companies

exceed two percent of admitted assets or, in aggregate, ten percent of admitted assets.

(6) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner.

(7) Investments authorized by section 7(3) of this act shall not exceed eighty percent of the fair value of the particular property at the time of the investment, unless guaranteed or insured.

(a) The fair value shall be determined by a competent appraiser at the time of the investment.

(b) Buildings and other improvements shall be kept insured for the benefit of the mortgagee.

NEW SECTION. Sec. 9. An insurer doing business that requires it to make payment in different currencies shall have investments in securities in each of these currencies in an amount that independently of all other investments meets the requirements of this chapter as applied separately to the insurer's obligations in each currency. The commissioner may by order exempt an insurer, or by rule a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for financial stability would be created by substantial fluctuations in relative currency values.

NEW SECTION. Sec. 10. (1)(a) An insurer shall not invest in investments that are prohibited for an insurer by statutes or rules of this state.

(b) The use of a derivative instrument for replication, speculative, or for any purposes other than hedging or income generation, is prohibited.

(c) Investment in real property for speculative, ranching, farming, mining, gaming, amusement, oil, gas, or mineral exploration, or club purposes, is prohibited.

(d) Investment in issued shares of its own capital stock, held directly or indirectly, except for the purpose of mutualization in accordance with RCW 48.08.080, is prohibited.

(e) Investment in securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors, is prohibited.

(f) Investment in securities issued by any insolvent corporation, is prohibited.

(g) Investment in any instrument or security which is found by the commissioner to be designed to evade any limitation or prohibition of this code, is prohibited.

(2) A reasonable time, not in excess of five years, shall be allowed for disposal of a prohibited investment in hardship cases if the investment is demonstrated by the insurer to have been legal when made, or the result of a mistake made in good faith, or if the commissioner deems that the sale of the asset would be contrary to the interests of insureds, creditors, or the general public.

NEW SECTION. Sec. 11. (1) Invested assets may be counted toward satisfaction of the minimum asset requirement only so far as they are invested in compliance with this chapter and applicable rules adopted and orders issued by

the commissioner pursuant to this chapter. Assets other than invested assets may be counted toward satisfaction of the minimum asset requirement at admitted annual statement value.

(2) An investment held as an admitted asset by an insurer on the effective date of this act which qualified under this chapter shall remain qualified as an admitted asset under this chapter.

(3) Assets acquired in the bona fide enforcement of creditors' rights or in bona fide workouts or settlements of disputed claims may be counted for the purposes of subsection (1) of this section for five years after acquisition if real property and three years if not real property, even if they could not otherwise be counted under this chapter. The commissioner may allow reasonable extensions of these periods if replacement of the assets within the periods would not be possible without substantial loss.

(4) If an insurer does not own, or is unable to apply toward compliance with this chapter, an amount of assets equal to its minimum asset requirement, the commissioner may deem it to be financially hazardous under chapter 48.31 RCW.

NEW SECTION. Sec. 12. (1) The commissioner may require any of the following from a person subject to regulation under this chapter:

(a) Statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses;

(b) Full explanation of the programming of any data storage or communication system in use;

(c) That information from any books, records, electronic data processing systems, computers, or any other information storage system be made available to the commissioner at a reasonable time and in a reasonable manner.

(2) The commissioner may prescribe forms for the reports under subsection (1) of this section and specify who shall execute or certify the reports. The forms for the reports required under subsection (1) of this section shall be consistent, so far as practicable, with those prescribed by other jurisdictions.

(3) The commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available to the commissioner.

(4) Any officer, manager or general agent of an insurer subject to this chapter, any person controlling or having a contract under which the person has a right to control the insurer, whether exclusively or otherwise, or a person with executive authority over or in charge of any segment of the insurer's affairs, shall reply promptly in writing or in other reasonably designated form, to a written inquiry from the commissioner requesting a reply. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section.

(5) The commissioner may require that any communication made to the commissioner under this section be verified.

(6) A communication to the commissioner, or to an expert or consultant retained by the commissioner, required by the provisions of this chapter shall not subject the person making it to an action for damages for the communication in the absence of actual malice.

(7) Notwithstanding the provisions of subsection (6) of this section, the commissioner may bring suit against any person providing information required under this chapter that is not truthful and accurate.

NEW SECTION. Sec. 13. The commissioner may retain at the insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist in reviewing the insurer's investments. Persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

NEW SECTION. Sec. 14. (1) If the commissioner determines that an insurer's investment practices do not meet the provisions of this chapter, the commissioner may, after notification to the insurer of the commissioner's findings, order the insurer to make changes necessary to comply with the provisions of this chapter.

(2) If the commissioner determines that by reason of the financial condition, current investment practice, or current investment plan of an insurer, the interests of insureds, creditors, or the general public are or may be endangered, the commissioner may impose reasonable additional restrictions upon the admissibility or valuation of investments or may impose restrictions on the investment practices of an insurer, including prohibition or divestment.

(3) The commissioner may count toward satisfaction of the minimum asset requirement any assets in which an insurer is required to invest under the laws of a country other than the United States as a condition for doing business in that country if the commissioner finds that counting them does not endanger the interests of insureds, creditors, or the general public.

(4) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order adjust the class limitations in section 8 of this act, for that insurer, to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the public of this state are sufficiently protected in other ways. Adjustments granted with respect to section 8 of this act, in aggregate, are limited to an amount equal to ten percent of the insurer's liabilities.

NEW SECTION. Sec. 15. An insurer aggrieved by an order or any other act or failure to act of the commissioner regarding compliance with this chapter or rules adopted under this chapter may request a hearing by following the procedures of chapters 48.04 and 34.05 RCW.

NEW SECTION. Sec. 16. The investment policy, or information related to the investment policy provided to the commissioner for review under this chapter shall be considered confidential and shall not be a public record or subject to subpoena.

NEW SECTION. Sec. 17. (1) This chapter prevails over any other statute purporting to authorize an insurer to make a particular investment if the other statute was enacted before July 1, 2012, and prevails over any statute enacted after July 1, 2012, unless the latter specifically includes amendments made to this chapter.

(2) An insurer shall value its assets in accordance with the valuation standards of the national association of insurance commissioners to the extent

those standards are consistent with the statutes of this state or rules or orders of the commissioner.

NEW SECTION. Sec. 18. (1) The commissioner may, in accordance with chapter 34.05 RCW, adopt rules interpreting and implementing the provisions of this chapter.

(2) The commissioner may, in accordance with chapter 34.05 RCW, adopt special investment restrictions as follows:

(a) The commissioner may by rule prescribe for defined classes of insurers special procedural requirements including special reports, prior approval, or subsequent disapproval of investments.

(b) The commissioner may by rule prescribe substantive restrictions on investments of defined classes of insurers, including:

(i) Specification of classes of assets that may not be counted toward satisfaction of the minimum asset requirement even though they may be counted for unrestricted insurers;

(ii) Specification of maximum amounts of assets that may be invested in a single investment, or an issue, a class or a group of classes of investments, expressed as percentages of total assets, capital, surplus, legal reserves, or other variables;

(iii) Prescription of qualitative tests for investments and conditions under which investments may be made, including requirements of specified ratings from investment advisory services, listing on specified stock exchanges, collateral, marketability, currency matching, and the financial and legal status of the issuer and its earnings capacity.

(3) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order grant an exemption to that insurer from any restriction under subsection (2) of this section to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the general public of this state are protected in other ways.

***NEW SECTION. Sec. 19.** (1) *By December 1, 2011, the insurance commissioner must submit a report to the governor and appropriate committees of the legislature, providing the following information:*

(a) *The estimated total dollar amount of insurance company assets affected by this act;*

(b) *An analysis outlining the pertinent investment changes made in this act and the reasons for such changes;*

(c) *An analysis detailing any projected risks to policyholders and taxpayers associated with the implementation of this act and any provisions included in this act to protect such stakeholders against such risks;*

(d) *A copy of proposed rules to implement this act;*

(e) *A general outline of any managerial and personnel modifications required in the office of the insurance commissioner to implement this act;*

(f) *An explanation describing why an insurance company's investment policy must be exempt from public disclosure and subpoena; and*

(g) *An analysis identifying other states that have: (i) Adopted this model legislation in both substantial or limited part, and the reasons for such*

decision; and (ii) explicitly chosen not to adopt this model legislation and the reasons for such decision.

(2) In preparing the report the commissioner shall consult with the department of financial institutions and the state investment board.

*Sec. 19 was vetoed. See message at end of chapter.

Sec. 20. RCW 48.13.350 and 2009 c 549 s 7055 are each amended to read as follows:

~~((1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chair of such committee authorizing the investment or loan.~~

~~(2) As to each such investment or loan the insurer's records)~~ A written record of each investment or loan of the funds of a domestic insurer shall contain:

~~((a))~~ (1) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

~~((b))~~ (2) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

~~((c))~~ (3) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

~~((d))~~ (4) In the case of all investments:

~~((i))~~ (a) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

~~((ii))~~ (b) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest.

Sec. 21. RCW 42.56.400 and 2010 c 172 s 2 and 2010 c 97 s 3 are each reenacted and amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) 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;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court; ~~(and)~~

(18) Documents, materials, or information obtained by the insurance commissioner under section 16 of this act; and

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010.

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

(1) RCW 48.13.010 (Scope of chapter—Eligible investments) and 1973 c 151 s 2 & 1947 c 79 s .13.01;

(2) RCW 48.13.020 (General qualifications) and 1983 1st ex.s. c 32 s 2, 1982 c 218 s 2, 1967 ex.s. c 95 s 11, & 1947 c 79 s .13.02;

(3) RCW 48.13.030 (Limitation on securities of one entity or a depository institution) and 2001 c 21 s 1, 1993 c 92 s 1, & 1947 c 79 s .13.03;

(4) RCW 48.13.040 (Public obligations) and 1947 c 79 s .13.04;

(5) RCW 48.13.050 (Corporate obligations) and 1993 c 92 s 2 & 1947 c 79 s .13.05;

(6) RCW 48.13.060 (Terms defined) and 1993 c 92 s 3 & 1947 c 79 s .13.06;

(7) RCW 48.13.070 (Securities of merged or reorganized institutions) and 1947 c 79 s .13.07;

(8) RCW 48.13.080 (Preferred or guaranteed stocks) and 1947 c 79 s .13.08;

(9) RCW 48.13.090 (Trustees' or receivers' obligations) and 1947 c 79 s .13.09;

(10) RCW 48.13.100 (Equipment trust certificates) and 1947 c 79 s .13.10;

(11) RCW 48.13.110 (Mortgages, deeds of trust, mortgage bonds, notes, contracts) and 1975 1st ex.s. c 154 s 1, 1969 ex.s. c 241 s 4, & 1947 c 79 s .13.11;

(12) RCW 48.13.120 (Investments limited by property value) and 2007 c 80 s 6, 1993 c 92 s 7, 1969 ex.s. c 241 s 5, 1967 c 150 s 11, 1955 c 303 s 1, 1949 c 190 s 16, & 1947 c 79 s .13.12;

(13) RCW 48.13.125 (Mortgage loans on one family dwellings—Limitation on amortization) and 1969 ex.s. c 241 s 6 & 1967 c 150 s 10;

(14) RCW 48.13.130 ("Encumbrance" defined) and 1955 c 303 s 2 & 1947 c 79 s .13.13;

(15) RCW 48.13.140 (Appraisal of property—Insurance—Limit of loan) and 1967 ex.s. c 95 s 12, 1955 c 303 s 3, & 1947 c 79 s .13.14;

(16) RCW 48.13.150 (Auxiliary chattel mortgages) and 1947 c 79 s .13.15;

(17) RCW 48.13.160 (Real property owned—Home office building) and 1981 c 339 s 6, 1973 c 151 s 3, 1969 ex.s. c 241 s 7, 1967 ex.s. c 95 s 13, 1949 c 190 s 17, & 1947 c 79 s .13.16;

(18) RCW 48.13.170 (Disposal of real property—Time limit) and 1967 ex.s. c 95 s 14 & 1947 c 79 s .13.17;

(19) RCW 48.13.180 (Foreign securities) and 2003 c 251 s 1 & 1947 c 79 s .13.18;

(20) RCW 48.13.190 (Policy loans) and 1947 c 79 s .13.19;

(21) RCW 48.13.200 (Savings and share accounts) and 1947 c 79 s .13.20;

(22) RCW 48.13.210 (Insurance stocks) and 1979 ex.s. c 199 s 3, 1979 ex.s. c 130 s 4, & 1947 c 79 s .13.21;

(23) RCW 48.13.218 (Limitation on insurer loans or investments) and 2001 c 90 s 1;

(24) RCW 48.13.220 (Common stocks—Investment—Acquisition—Engaging in certain businesses) and 2008 c 217 s 5, 1982 c 218 s 3, 1973 c 151 s 4, 1949 c 190 s 18, & 1947 c 79 s .13.22;

- (25) RCW 48.13.230 (Collateral loans) and 1947 c 79 s .13.23;
- (26) RCW 48.13.240 (Miscellaneous investments) and 2004 c 88 s 1, 1982 c 218 s 4, & 1947 c 79 s .13.24;
- (27) RCW 48.13.250 (Special consent investments) and 1947 c 79 s .13.25;
- (28) RCW 48.13.260 (Required investments for capital and reserves) and 1971 ex.s. c 13 s 16 & 1947 c 79 s .13.26;
- (29) RCW 48.13.265 (Investments secured by real estate—Amount restricted) and 2007 c 80 s 7 & 1957 c 193 s 8;
- (30) RCW 48.13.270 (Prohibited investments) and 1995 c 84 s 1, 1993 c 92 s 4, 1982 c 218 s 5, & 1947 c 79 s .13.27;
- (31) RCW 48.13.273 (Acquisition of medium and lower grade obligations—Definitions—Limitations—Rules) and 1993 c 92 s 5;
- (32) RCW 48.13.275 (Obligations rated by the securities valuation office) and 2007 c 80 s 8 & 1993 c 92 s 6;
- (33) RCW 48.13.280 (Securities underwriting, agreements to withhold or repurchase, prohibited) and 1947 c 79 s .13.28;
- (34) RCW 48.13.285 (Derivative transactions—Restrictions—Definitions—Rules) and 1997 c 317 s 1;
- (35) RCW 48.13.290 (Disposal of ineligible property or securities) and 1982 c 218 s 6, 1973 c 151 s 5, & 1947 c 79 s .13.29; and
- (36) RCW 48.13.340 (Authorization of investments) and 1949 c 190 s 19 & 1947 c 79 s .13.34.

NEW SECTION. Sec. 23. Sections 1 through 18 of this act are each added to chapter 48.13 RCW.

NEW SECTION. Sec. 24. This act takes effect July 1, 2012.

Passed by the House April 14, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Section 19, Substitute House Bill 1257 entitled:

"AN ACT Relating to adopting the investments of insurers model act."

This bill updates the statutes on insurer investments to increase financial security and to provide more flexibility for insurers to manage their investments.

Section 19 would require the Office of the Insurance Commissioner to submit a report to the Governor and the Legislature, in consultation with the Department of Financial Institutions and the State Investment Board, by December 1, 2011. This is prior to the effective date of the act, July 1, 2012. Section 19 would require the Office of the Insurance Commissioner to gather information that is a redundant to the bill analysis, overly burdensome to obtain, or difficult to analyze prior to implementation of the law. Further, requiring proposed rules to be submitted to the Governor and Legislature would infringe upon the role of the Insurance Commissioner and would blur the distinction between the Legislature and a state executive office with regard to the rulemaking process.

For these reasons, I have vetoed Section 19 of Substitute House Bill 1257.

With the exception of Section 19, Substitute House Bill 1257 is approved."

CHAPTER 189

[Engrossed Substitute House Bill 1309]

CONDOMINIUM AND HOMEOWNERS' ASSOCIATIONS—
RESERVE ACCOUNTS AND STUDIES

AN ACT Relating to reserve accounts and studies for condominium and homeowners' associations; amending RCW 64.34.020, 64.34.308, 64.34.380, 64.34.382, 64.34.384, 64.38.010, and 64.38.025; reenacting and amending RCW 64.34.010; adding new sections to chapter 64.38 RCW; and providing an effective date.

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

Sec. 1. RCW 64.34.020 and 2008 c 115 s 8 are each amended to read as follows:

In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(11) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(12) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(13) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(14) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (16) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(15) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the

board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 ~~((4) or)~~ (5) or (6).

(16) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(17) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(18) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(19) "Effective age" means the difference between the estimated useful life and remaining useful life.

(20) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(21) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(22) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(23) "Identifying number" means the designation of each unit in a condominium.

(24) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(25) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(26) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(27) "Mortgage" means a mortgage, deed of trust or real estate contract.

(28) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(29) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(30) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements

thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(31) "Remaining useful life" means the estimated time, in years, ~~((that a reserve component can be expected to continue to serve))~~ before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(32) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(33) "Residential purposes" means use for dwelling or recreational purposes, or both.

(34) "Reserve component~~((s))~~" means a common element~~((s))~~ whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(35) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(36) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308~~((4))~~ (5).

(37) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(38) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(39) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(40) "Useful life" means the estimated time, ~~((#))~~ between years, that ~~((a reserve component can be expected to serve its intended function))~~ major maintenance, repair, or replacement is estimated to occur.

(41) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.34.380.

(42) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.34.380, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(43) "Significant assets" means that the current total cost of major maintenance, repair, and replacement of the reserve components is fifty percent or more of the gross budget of the association, excluding reserve account funds.

Sec. 2. RCW 64.34.308 and 1992 c 220 s 15 are each amended to read as follows:

(1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection ~~((6))~~ (7) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all unit owners, the board of directors shall disclose to the unit owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each unit per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per unit per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

~~(5)~~(a) Subject to subsection ~~((5))~~ (6) of this section, the declarant may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection ~~((4))~~ (5)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

~~((5))~~ (6) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

~~((6))~~ (7) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members,

at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

~~((7))~~ (8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners.

Sec. 3. RCW 64.34.380 and 2008 c 115 s 1 are each amended to read as follows:

(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. ~~((A reserve account shall be established in the name of the association.))~~ If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) This section and RCW 64.34.382 through ~~((64.34.390))~~ 64.34.392 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements.

Sec. 4. RCW 64.34.382 and 2008 c 115 s 2 are each amended to read as follows:

(1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study ~~((shall))~~ must include:

(a) A reserve component list, including roofing, painting, paving, decks, siding, plumbing, windows, and any other reserve component that would cost more than one percent of the annual budget for major maintenance, repair, or

replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current repair and replacement cost for each component;

(b) The date of the study and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rate;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by a reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from those reserves without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study shall include the following disclosure:

"This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

Sec. 5. RCW 64.34.384 and 2008 c 115 s 3 are each amended to read as follows:

An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in

writing by the unit owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.

Sec. 6. RCW 64.34.010 and 2008 c 115 s 7 and 2008 c 114 s 1 are each reenacted and amended to read as follows:

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and (k) through ~~((t))~~ (t) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through ~~((34.34.390))~~ 64.34.392 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants(~~(+relocation assistance)~~)-relocation assistance), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1,

1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium.

Sec. 7. RCW 64.38.010 and 1995 c 283 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(7) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.

(8) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under section 9 of this act.

(9) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(10) "Effective age" means the difference between the estimated useful life and remaining useful life.

(11) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under section 9 of this act, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(12) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all

reserve components' fully funded balances is the association's fully funded balance.

(13) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(14) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(15) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(16) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(17) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(18) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(19) "Significant assets" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.

(20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

Sec. 8. RCW 64.38.025 and 1995 c 283 s 5 are each amended to read as follows:

(1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

NEW SECTION. Sec. 9. A new section is added to chapter 64.38 RCW to read as follows:

(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and this chapter. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable

discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized.

NEW SECTION. Sec. 10. A new section is added to chapter 64.38 RCW to read as follows:

(1) A reserve study as described in section 9 of this act is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component;

(b) The date of the study, and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and baseline funding plan;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions

to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

NEW SECTION. Sec. 11. A new section is added to chapter 64.38 RCW to read as follows:

An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.

NEW SECTION. Sec. 12. A new section is added to chapter 64.38 RCW to read as follows:

(1) When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter.

NEW SECTION. Sec. 13. A new section is added to chapter 64.38 RCW to read as follows:

Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account;

have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 64.38 RCW to read as follows:

An association is not required to follow the reserve study requirements under RCW 64.38.025 and sections 9 through 13 of this act if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association.

NEW SECTION. Sec. 15. This act takes effect January 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 190

[Engrossed Substitute House Bill 1367]

FOR HIRE VEHICLES AND VEHICLE OPERATORS

AN ACT Relating to for hire vehicles and for hire vehicle operators; adding new sections to chapter 51.12 RCW; adding a new section to chapter 51.16 RCW; adding a new section to chapter 46.72 RCW; adding a new section to chapter 46.72A RCW; adding new sections to chapter 81.72 RCW; prescribing penalties; 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 51.12 RCW to read as follows:

The legislature finds that taxicab, limousine, and other for hire vehicle operators are at significant risk of injury due to work-related accidents or crimes such as robbery that may not be covered by standard vehicle insurance policies. Since almost all taxicab, limousine, and other for hire vehicle business operations are independent small business franchises, their owners or operators may opt out of industrial insurance coverage without full consideration for the risk of financial exposure to themselves or to their businesses. As a result, health care may be provided to them at public expense or not at all, and erroneous claims may be made by health care providers for insurance coverage, against the state department of labor and industries, private businesses, or the taxicab associations in which certain municipalities require participation. Most for hire vehicle operators do not enjoy the benefit of the broad public policy embodied in this title that mandates industrial insurance protection for workers. The legislature therefore declares that all taxicab, limousine, for hire vehicle businesses, and for hire vehicle operators are subject to mandatory industrial insurance coverage under this title.

NEW SECTION. Sec. 2. A new section is added to chapter 51.12 RCW to read as follows:

(1) Any business that owns and operates a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under

chapter 81.72 RCW and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(2) Any business that as owner or agent leases a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under chapter 81.72 RCW to a for hire operator or a chauffeur and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(3) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Chauffeur" has the same meaning as provided in RCW 46.04.115; and

(b) "For hire operator" means a person who is operating a vehicle for the purpose of carrying persons for compensation.

NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW to read as follows:

(1) For the purposes of section 2 of this act:

(a) By no later than January 1, 2012, the department must determine by rule the basis for industrial insurance premiums for: (i) Any business that owns and operates for hire, limousine, or taxicab vehicles; and (ii) any business that owns and leases for hire, limousine, or taxicab vehicles to a business operating such vehicle; and

(b) Not more than ninety days after the department has determined the basis for industrial insurance premiums by rule under (a) of this subsection, the department must assess such premiums on: (i) Any business that owns and operates for hire, limousine, or taxicab vehicles; and (ii) any business that owns and leases for hire, limousine, or taxicab vehicles to a business operating such vehicle.

(2) In determining the basis under this section, the department must consider:

(a) The unique economic structures of the taxicab, for hire vehicle, and limousine industries;

(b) The difficulty of equitably assessing industrial insurance premiums on classes of businesses that utilize both employer/employee and independent contractor business models;

(c) The economic impact on businesses of a rate and assessment alternative, such as a flat rate and assessment levied on a per vehicle or a miles driven basis, compared to that of an assessment based on hours worked;

(d) The department's costs and efficiency of administration;

(e) The cost to businesses and covered workers; and

(f) Anticipated effectiveness in implementing mandatory industrial insurance coverage of for hire vehicle operators as provided in section 2 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 51.12 RCW to read as follows:

(1) In order to assist the department with controlling costs related to the self-monitoring of industrial insurance claims by independent owner-operated for hire vehicle, limousine, and taxicab businesses, the department may appoint a panel of individuals with for hire vehicle, limousine, or taxicab transportation industry experience and expertise to advise the department.

(2) The owner of any for hire, limousine, or taxicab vehicle subject to mandatory industrial insurance pursuant to section 2 of this act is eligible for inclusion in a retrospective rating program authorized and established pursuant to chapter 51.18 RCW.

NEW SECTION. Sec. 5. A new section is added to chapter 46.72 RCW to read as follows:

(1) A for hire vehicle certificate issued pursuant to this chapter must be suspended or revoked and may not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under sections 2 and 3 of this act.

(2)(a) A for hire vehicle and its operator must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the for hire vehicle is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the for hire vehicle owner and the for hire vehicle operator if they are not one and the same.

(3) For hire vehicle license suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4) The department of labor and industries and the department of licensing may adopt rules and enter into cooperative agreements to implement this section.

NEW SECTION. Sec. 6. A new section is added to chapter 46.72A RCW to read as follows:

(1) A business license and vehicle certificate issued pursuant to RCW 46.72A.050 must be suspended or revoked and must not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under sections 2 and 3 of this act.

(2)(a) A limousine and its chauffeur must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the limousine is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the limousine vehicle owner and the limousine chauffeur if they are not one and the same.

(3) Business license and vehicle certificate suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4) The department of labor and industries and the department of licensing may adopt rules and enter into cooperative agreements to implement this section.

NEW SECTION. Sec. 7. A new section is added to chapter 81.72 RCW to read as follows:

(1) A license issued pursuant to this chapter must be suspended or revoked and may not be renewed in the event of failure to pay the mandatory for hire vehicle operator industrial insurance premium as charged by the department of labor and industries under sections 2 and 3 of this act.

(2)(a) A taxicab vehicle and its operator must have evidence of payment in good standing with the department of labor and industries of the for hire vehicle operator industrial insurance premium, whenever the taxicab vehicle is operated on public streets and highways for compensation.

(b) Failure to produce evidence of payment of the for hire vehicle insurance premium upon demand by a law enforcement officer or other government agent acting under the authority of this chapter is a civil infraction punishable by a fine of not more than two hundred fifty dollars per infraction separately upon both the taxicab vehicle owner and the taxicab vehicle operator if they are not one and the same.

(3) Taxicab vehicle license suspension or revocation and the administration thereof for failure to pay the mandatory industrial insurance premium must be at the direction and expense of the department of labor and industries.

(4)(a) The department of labor and industries, the department of licensing, cities, towns, counties, and port districts may enter into cooperative agreements to implement this section.

(b) The department of licensing and the department of labor and industries may adopt rules to implement this section.

(c) Cities, towns, counties, and port districts may take legislative action to implement this section.

NEW SECTION. Sec. 8. A new section is added to chapter 81.72 RCW to read as follows:

(1) Any city, town, county, or port district setting the rates charged for taxicab services under this chapter must adjust rates to accommodate changes in the cost of industrial insurance or in other industry-wide costs.

(2) Any business that as owner leases a taxicab licensed under this chapter to a for hire operator must make a reasonable effort to train the for hire operator in motor vehicle operation and safety requirements and monitor operator compliance. Monitoring operator compliance may include the use of vehicle operator monitoring cameras.

NEW SECTION. Sec. 9. Except for section 3 of this act, this act takes effect January 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 191

[Second Substitute House Bill 1405]

CONSUMER LOAN ACT—LOANS

AN ACT Relating to loans made under the consumer loan act; amending RCW 31.04.027; and reenacting and amending RCW 31.04.025.

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

Sec. 1. RCW 31.04.025 and 2009 c 311 s 1 and 2009 c 120 s 3 are each reenacted and amended to read as follows:

(1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of chapter 63.14 RCW.

(2) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities making loans under chapter 63.14 RCW (retail installment sales of goods and services);

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making ~~(loans)~~ a loan primarily for business, commercial, or agricultural purposes~~(-or-)~~ unless the loan is secured by a lien on the borrower's primary residence;

(f) Any person making loans made to government or government agencies or instrumentalities~~(-)~~ or making loans to organizations as defined in the federal truth in lending act;

~~((f))~~ (g) Entities making loans under chapter 43.185 RCW (housing trust fund);

~~((g))~~ (h) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing; ~~((and~~

~~((h))~~ (i) Nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents; and

(j) Entities making loans which are not residential mortgage loans under a credit card plan.

(3) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section.

Sec. 2. RCW 31.04.027 and 2001 c 81 s 3 are each amended to read as follows:

It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Fail to make disclosures to loan applicants as required by RCW 31.04.102 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property; ((~~or~~))

(10) Accept from any borrower at or near the time a loan is made and in advance of any default an execution of, or induce any borrower to execute, any instrument of conveyance, not including a mortgage or deed of trust, to the lender of any ownership interest in the borrower's primary residence that is the security for the borrower's loan;

(11) Obtain at the time of closing a release of future damages for usury or other damages or penalties provided by law or a waiver of the provisions of this chapter; or

(12) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest or otherwise fail to comply with any requirement of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12, or any other applicable federal statute, as now or hereafter amended, in any advertising of residential mortgage loans or any other consumer loan company activity.

Passed by the House April 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 192

[Substitute House Bill 1431]

SCHOOL DISTRICTS—FINANCIAL INSOLVENCY

AN ACT Relating to addressing financial insolvency of school districts; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The superintendent of public instruction shall convene educational service districts to analyze options and make recommendations for a clear legal framework and process for dissolution of a school district on the basis of financial insolvency.

(2) The analysis must include, but not be limited to:

(a) A definition of financial insolvency;

(b) A time frame, criteria, and process for initiating a dissolution of an insolvent school district;

(c) Roles and responsibilities of the office of the superintendent of public instruction, educational service districts, and regional committees on school district organization; and

(d) Recommendations for how to address such issues as:

(i) Limiting a school board's ability to incur additional debt during the dissolution process;

(ii) Terminating staff contracts expeditiously;

(iii) Liquidation of liabilities;

(iv) Waiving requirements of the school accounting manual;

(v) Clarifying effective dates of transfers of property for taxation purposes;

(vi) Dealing with bonded indebtedness; and

(vii) Circumstances that require approval of voters in either the annexing school district or the dissolving school district, or both.

(3) In conducting the analysis, the educational service districts must consult with individuals with legal and financial expertise.

(4) As part of their report, the educational service districts may recommend a financial early warning system for consistent, early identification of school districts with potential fiscal difficulties.

(5) The superintendent of public instruction must submit a final report and recommendations to the governor and the education and fiscal committees of the legislature by January 5, 2012. The recommendations must specifically address amendments to current law as well as propose new laws as necessary.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2011, in the omnibus appropriations act, this act is null and void.

Passed by the House April 13, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 193

[House Bill 1455]

FIREARMS—POSSESSION RIGHTS—PETITION

AN ACT Relating to where an individual may petition to restore firearm possession rights; and amending RCW 9.41.040, 9.41.047, and 36.23.030.

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

Sec. 1. RCW 9.41.040 and 2009 c 293 s 1 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

~~((a))~~ (i) Under RCW 9.41.047; and/or

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

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

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

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

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

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

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

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

Sec. 2. RCW 9.41.047 and 2009 c 293 s 2 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition (~~may~~) must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

Sec. 3. RCW 36.23.030 and 2002 c 30 s 1 are each amended to read as follows:

The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) A record of the number of petitions filed for restoration of the right to possess a firearm under chapter 9.41 RCW and the outcome of the petitions;

(12) Such other records as are prescribed by law and required in the discharge of the duties of his or her office.

Passed by the House April 13, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 194

[Substitute House Bill 1453]

COMMERCIAL SHELLFISH ENFORCEMENT

AN ACT Relating to commercial shellfish enforcement; amending RCW 69.30.010, 69.30.020, 69.30.030, 69.30.050, 69.30.060, 69.30.080, 69.30.085, 69.30.110, and 69.30.140; and prescribing penalties.

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

Sec. 1. RCW 69.30.010 and 2001 c 253 s 5 are each amended to read as follows:

~~((When used in this chapter, the following terms shall have the following meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010.

(10) "Ex officio fish and wildlife officer" means an ex officio fish and wildlife officer as defined in RCW 77.08.010.

(11) "Approved shellfish tag or label" means a tag or label meeting the requirements of the national shellfish sanitation program model ordinance.

(12) "Shellstock" means live molluscan shellfish in the shell.

Sec. 2. RCW 69.30.020 and 1955 c 144 s 2 are each amended to read as follows:

~~((Only shellfish bearing a certificate of))~~ It is unlawful to sell or offer to sell shellfish in this state unless the shellfish bear an approved shellfish tag or label indicating compliance with the sanitary requirements of this state or a state, territory, province, or country of origin whose requirements are equal or comparable to those established pursuant to this chapter ~~((may be sold or offered for sale in the state of Washington))~~. The department, a fish and wildlife officer, or an ex officio fish and wildlife officer may immediately seize containers of shellfish that are not affixed with an approved shellfish tag or label.

Sec. 3. RCW 69.30.030 and 1995 c 147 s 2 are each amended to read as follows:

(1) The state board of health shall ~~((cause such investigations to be made as are necessary to determine reasonable requirements))~~ adopt rules governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations~~((;))~~ in order to protect public health and carry out the provisions of this chapter~~((; and shall adopt such requirements as rules and regulations of the state board of health))~~. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish

taken under this chapter. The state board of health shall adopt rules governing procedures for the disposition of seized shellfish.

(2) The state board of health shall consider the most recent version of the national shellfish sanitation program model ordinance, adopted by the interstate shellfish sanitation conference, when adopting rules.

Sec. 4. RCW 69.30.050 and 1995 c 147 s 3 are each amended to read as follows:

~~(Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to)~~

(1) It is unlawful for a person to harvest shellfish from shellfish growing areas in a commercial quantity or for sale for human consumption unless the shellfish growing area:

(a) Has a valid certificate of approval; and

(b) Meets the requirements of this chapter and the rules adopted under this chapter.

(2) A person may not remove shellfish in a commercial quantity or for sale for human consumption from a shellfish growing area in the state of Washington ((shall first apply to the department for)) unless:

(a) The person has received a certificate of approval ((of)) for the shellfish growing area from the department; and

(b) Approved shellfish tags are affixed to each container of shellstock prior to removal from the shellfish growing area, except bulk tagging is permitted as allowed in the national shellfish sanitation program model ordinance. ((The department shall cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

~~Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed))~~

(3) Before issuing a certificate of approval, the department shall inspect the shellfish growing area. The department shall issue a certificate of approval if the area meets the requirements of this chapter and the rules adopted under this chapter.

(4) A certificate of approval is valid for a period of twelve months. The department may revoke a certificate of approval at any time the area is found out of compliance with the requirements of this chapter or the rules adopted under this chapter.

(5) It is unlawful to remove shellfish from shellfish growing areas without a certificate of approval in a commercial quantity for purposes other than human consumption, including but not limited to use as bait or seed, unless:

(a) The shellfish operation and shellfish growing area is readily available to monitoring and inspections; and

(b) The department has determined the shellfish operation is designed to ensure that shellfish harvested from such an area is not diverted for human consumption.

(6) Nothing in this section prohibits a person from removing shellfish for use as bait or seed from an approved shellfish growing area.

(7) The department's certificate of approval to harvest shellfish for purposes other than human consumption shall specify:

(a) The date or dates and time of harvest ~~((and))~~ ;

(b) All applicable conditions of harvest~~((;))~~;

(c) Identification by tagging, dying, or other department-approved means~~((;))~~; and

(d) Information about the removal method, transportation method, processing technique, sale details, and other factors to ensure that shellfish harvested from such areas are not diverted for ~~((use as food))~~ human consumption.

Sec. 5. RCW 69.30.060 and 1985 c 51 s 3 are each amended to read as follows:

~~((No))~~ (1) It is unlawful for a person ~~((shall))~~ to cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. ~~((Any person desiring to))~~

(2) A person may not cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, ~~((shall apply to the department for))~~ unless the person has received a certificate of approval from the department for the establishment in which such operations will be done.

(3) Before issuing a certificate of approval, the department shall ~~((cause such))~~ inspect the establishment ~~((to be inspected))~~, and if the establishment meets the ~~((sanitary requirements))~~ rules of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the ~~((sanitary requirements))~~ rules of the state board of health.

Sec. 6. RCW 69.30.080 and 1991 c 3 s 304 are each amended to read as follows:

(1) The department may deny, revoke, or suspend ~~((, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it))~~ a person's license or certificate of approval for:

(a) Violations of this chapter or the rules adopted under this chapter; or

(b) Harassing or threatening an authorized representative of the department during the performance of his or her duties.

(2) RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 7. RCW 69.30.085 and 1998 c 44 s 1 are each amended to read as follows:

(1) A person, or its director or officer, 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))~~ Supervise, be employed by, or 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))~~;

(c) Participate in the brokering of shellfish, purchase of shellfish for resale, or retail sale of shellfish; or

(d) Engage in any activity associated with selling or offering to sell shellfish.

(2) Subsections (1)(c) and (d) of this section do not apply to retail purchases of shellfish for personal use.

(3) Subsection (1) of 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.

(4) Unlawful operations under subsection (1) of this section when a license or certificate of approval is denied, revoked, or suspended is a class C felony. Upon conviction, the department shall order that the person's license or certificate of approval be revoked for a period of at least five years, or that a person whose application for a license or certificate of approval was denied be ineligible to reapply for a period of at least five years.

(5) A license or certificate of approval issued under this chapter may not be assigned or transferred in any manner without department approval.

Sec. 8. RCW 69.30.110 and 2001 c 253 s 6 are each amended to read as follows:

(1) It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display ~~((immediately))~~ a certificate of approval, or department approved equivalent, issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the grower to the penalty provisions of this chapter, as well as ~~((immediate))~~ seizure and disposition, up to and including disposal, of the shellfish by the representative or officer.

(2) Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the processor to the penalty provisions of this chapter, as well as ~~((immediate))~~ seizure and disposition, up to and including disposal, of the shellfish by the representative or officer.

~~((Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish.))~~

Sec. 9. RCW 69.30.140 and 2001 c 253 s 7 are each amended to read as follows:

Except as provided in RCW 69.30.085(4), any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter or rules adopted under this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a conviction for purposes of license revocation and suspension of privileges under RCW 77.15.700(5).

Passed by the House February 25, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 195

[House Bill 1465]

LIQUOR LICENSES—CONDITIONS AND RESTRICTIONS

AN ACT Relating to conditions and restrictions for liquor licenses; amending RCW 66.24.010, 66.24.410, 66.24.371, and 66.24.240; and reenacting and amending RCW 66.04.010 and 66.24.244.

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

Sec. 1. RCW 66.24.010 and 2009 c 271 s 6 are each 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, or the renewal of 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, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. 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 doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, 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. 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. 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 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 rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license (~~shall~~) may be listed on the face of the individual license along with the trade name, address, and expiration date. Conditions and restrictions imposed by the board may also be included in official correspondence separate from the license.

(7) Every licensee shall post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal 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 is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The 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 the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the

applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send 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. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) 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 (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption 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 main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving 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. The board may extend the time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) 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.

(c) It is the intent under this subsection (9) 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)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) 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 additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) 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 applies to temporary licenses.

(d) 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.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

Sec. 2. RCW 66.24.410 and 2007 c 370 s 18 are each amended to read as follows:

(1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be

satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. ~~((The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition))~~ Requirements for complete meals shall be determined by the board in rules adopted pursuant to chapter 34.05 RCW.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW.

Sec. 3. RCW 66.04.010 and 2009 c 373 s 1 and 2009 c 271 s 2 are each reenacted and amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within

the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both(~~and has an occupancy load of one hundred or more~~)).

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the

public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(40) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(41) "Store" means a state liquor store established under this title.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the

purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

Sec. 4. RCW 66.24.371 and 2009 c 373 s 6 are each amended to read as follows:

(1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) Upon approval by the board, the beer and/or wine specialty shop licensee that exceeds fifty percent beer and/or wine sales may also receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and fill at the tap by the licensee at the time of sale. If the beer and/or wine specialty shop licensee does not exceed fifty percent beer and/or wine sales, the board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty shop maintains alcohol inventory that exceeds fifteen thousand dollars.

(4) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the

license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

~~((4))~~ (5) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

(6) The board may adopt rules to implement this section.

Sec. 5. RCW 66.24.244 and 2008 c 248 s 2 and 2008 c 41 s 9 are each reenacted and 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, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. 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, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

~~((4))~~ (5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

~~((5))~~ (6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (~~(5)~~) (6) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (~~(5)~~) (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (~~(5)~~) (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (~~(5)~~) (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

~~((6))~~ (7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

Sec. 6. RCW 66.24.240 and 2008 c 41 s 7 are each amended to read as follows:

(1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010~~((6))~~ (7), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any domestic brewery licensed under this section may also sell beer produced by another domestic brewery or a microbrewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the domestic brewery's on-tap offering of its own brands.

(4) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

~~((4))~~ (5) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010~~((6))~~ (7), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

~~((5))~~ (6)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may

not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((5))~~ (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 196

[Substitute House Bill 1467]

WATER WELL CONSTRUCTION—DEFINITION OF WELL

AN ACT Relating to the definition of a well; and amending RCW 18.104.020.

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

Sec. 1. RCW 18.104.020 and 2005 c 84 s 1 are each amended to read as follows:

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

(1) "Abandoned well" means a well that is unmaintained or is in such disrepair that it is unusable or is a risk to public health and welfare.

(2) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well;

(c) Drilling a geotechnical soil boring; or

(d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

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

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert groundwater for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of groundwater, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(8) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(9) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(10) "Groundwater" means and includes groundwaters as defined in RCW 90.44.035.

(11) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(12) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement.

Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(13) "Monitoring well" means a well designed to obtain a representative groundwater sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(14) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(15) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(16) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(17) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(18) "Remediation well" means a well intended or used to withdraw groundwater or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual groundwater contamination.

(19) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

(20) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(21) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of groundwater. "Water wells" include ground source heat pump borings and grounding wells.

(22) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(23)(a) "Well" means water wells, resource protection wells, dewatering wells, and geotechnical soil borings.

(b) Well does not mean an excavation made for the purpose of:

(i) Obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products;

(ii) Siting and constructing an on-site sewage disposal system as defined in RCW 70.118.020 or a large on-site sewage system as defined in RCW 70.118B.010; or

(iii) Inserting any device or instrument less than ten feet in depth into the soil for the sole purpose of performing soil or water testing or analysis or establishing soil moisture content as long as there is no withdrawal of water in any quantity other than as necessary to perform the intended testing or analysis.

(24) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW.

Passed by the House April 13, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 197

[House Bill 1473]

TRAFFIC SCHOOLS—USE OF FEES

AN ACT Relating to the use of existing fees collected for the cost of traffic schools; and adding new sections to chapter 46.83 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.83 RCW to read as follows:

(1) A traffic school established by a city, town, or county under this chapter that collects fees for the cost of attending the traffic school may use any fees collected that are in excess of the costs of the traffic school for the following activities:

- (a) Safe driver education materials and programs;
- (b) Safe driver education promotions and advertising; or
- (c) Costs associated with the training of law enforcement officers.

(2) This section does not authorize a city, town, or county to increase or impose new fees for traffic schools solely for the uses authorized in subsection (1) of this section.

(3) This section is not intended, and may not be construed, to reduce, increase, or otherwise impact funding for judicial programs, functions, or services.

NEW SECTION. Sec. 2. A new section is added to chapter 46.83 RCW to read as follows:

A traffic school established by a city, town, or county under this chapter that collects fees for the cost of attending the traffic school may not charge a fee in excess of the penalty for an unscheduled traffic infraction established by the supreme court pursuant to RCW 46.63.110. For the purposes of this section, the penalty includes the base penalty and all assessments and other costs that are required by statute or rule to be added to the base penalty.

Passed by the House April 13, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 198

[Substitute House Bill 1663]

HIGHER EDUCATION—PURCHASING AUTHORITY

AN ACT Relating to the purchasing authority of institutions of higher education; amending RCW 28B.10.029; and declaring an emergency.

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

Sec. 1. RCW 28B.10.029 and 2010 c 61 s 1 are each amended to read as follows:

(1)(a) 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.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration.

(c) 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 43.19.560 through 43.19.637.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.41.310, 43.41.290, and 43.41.350.

(g) 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.

(h) 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) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection.

(5) 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.

****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.***

****Sec. 2 was vetoed. See message at end of chapter.***

Passed by the House April 14, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Section 2, Substitute House Bill 1663 entitled:

"AN ACT Relating to the purchasing authority of institutions of higher education."

This bill removes higher education institutions from the requirement to seek approval from the Office of Financial Management to be exempted from certain purchasing from the Department of Corrections. Section 2 of this bill is an emergency clause that is not necessary. Higher education institutions have been exceeding the minimum 2% purchase target from Correctional Industries, and there is no need for the bill to go into effect immediately.

For this reason, I have vetoed Section 2 of Substitute House Bill 1663.

With the exception of Section 2, Substitute House Bill 1663 is approved."

CHAPTER 199

[Substitute House Bill 1485]

CHARITABLE SOLICITATIONS

AN ACT Relating to charitable solicitations; amending RCW 19.09.010, 19.09.020, 19.09.062, 19.09.065, 19.09.075, 19.09.079, 19.09.085, 19.09.097, 19.09.200, 19.09.210, 19.09.230, 19.09.271, 19.09.275, 19.09.276, 19.09.277, 19.09.279, 19.09.305, 19.09.315, 19.09.340, 19.09.355, 19.09.400, and 19.09.430; reenacting and amending RCW 19.09.100; adding new sections to chapter 19.09 RCW; repealing RCW 19.09.076, 19.09.190, 19.09.240, 19.09.500, and 19.09.540; and prescribing penalties.

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

Sec. 1. RCW 19.09.010 and 2007 c 471 s 1 are each amended to read as follows:

The purpose of this chapter is to:

(1) Provide citizens of the state of Washington with information relating to ~~((persons and organizations who))~~ any entity that solicits funds from the public for public charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes.

Sec. 2. RCW 19.09.020 and 2007 c 471 s 2 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but all are subject to RCW 19.09.100 ~~((12,))~~ (15) ~~((, and))~~ through (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and

other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making (~~charitable~~) solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration (~~within this state~~) directly or indirectly solicits or receives contributions within this state for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of, or (~~is held out~~) represents to persons in this state as independently engaged in the business of, soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, or promise, (~~or grant~~) for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written

agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Gross revenue" or "annual gross revenue" means, for any accounting period, the total value of revenue, excluding unrealized capital gains, but including noncash contributions of tangible, personal property received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(13) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

~~((13))~~ (14) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

~~((14))~~ (15) "Political organization" means those organizations whose activities are subject to chapter ~~((42-17))~~ 42.17A RCW or the Federal Elections Campaign Act of 1971, as amended.

~~((15))~~ (16) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

~~((16))~~ (17) "Secretary" means the secretary of state.

~~((17))~~ (18) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~((18))~~ (19)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(20) "Solicitation report" means the financial information the secretary requires pursuant to RCW 19.09.075 or 19.09.079.

NEW SECTION. Sec. 3. A new section is added to chapter 19.09 RCW to read as follows:

The application requirements of RCW 19.09.075 do not apply to:

(1) Any charitable organization raising less than fifty thousand dollars in any accounting year when all the activities of the organization, including all fund-raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer, director, member, or trustee of the organization, other than as part of a charitable class benefited by the charitable organization.

(2) Appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual.

Sec. 4. RCW 19.09.062 and 2010 1st sp.s. c 29 s 11 are each amended to read as follows:

The secretary of state (~~shall~~) must collect the following fees in accordance with this chapter:

(1) For an application for registration as a charitable organization, a fee of sixty dollars. Twenty dollars of this fee must be deposited in the state general fund and the remaining forty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(2) For an annual renewal of registration as a charitable organization, a fee of forty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining thirty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(3) For an application for registration as a commercial fund-raiser, a fee of three hundred dollars. Two hundred fifty dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(4) For an annual renewal of registration as a commercial fund-raiser, a fee of two hundred twenty-five dollars. One hundred seventy-five dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(5) For a registration of a commercial fund-raiser service contract, a fee of twenty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining ten dollars must be deposited in the charitable organization education account under RCW 19.09.530.

Sec. 5. RCW 19.09.065 and 1993 c 471 s 2 are each amended to read as follows:

(1) All charitable organizations and commercial fund-raisers ~~((shall))~~ must register with the secretary prior to conducting any solicitations.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter ~~((shall be))~~ is a public record except as ~~((otherwise stated in this chapter))~~ provided by law. Social security numbers and financial account numbers are not public information.

(4) Registration ~~((shall))~~ must not be considered or be represented as an endorsement by the secretary or the state of Washington.

NEW SECTION. Sec. 6. A new section is added to chapter 19.09 RCW, to be codified between RCW 19.09.065 and 19.09.075, to read as follows:

(1) Entities are deemed registered under RCW 19.09.075 or 19.09.079 twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(2) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary will notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

(3) If an applicant fails to pay a required fee for any filing, the secretary will notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 19.09 RCW, to be codified between section 6 of this act and RCW 19.09.075, to read as follows:

Charitable organizations must ensure that the financial information included in the solicitation report fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the period presented to the secretary for filing. If the financial information submitted to the secretary is incorrect in any material way, it is a violation of this chapter and the charitable organization may be subject to penalties as provided under RCW 19.09.279.

Sec. 8. RCW 19.09.075 and 2010 1st sp.s. c 29 s 12 are each amended to read as follows:

(1) An application for initial registration and renewal as a charitable organization ~~((shall))~~ must be submitted ~~((in))~~ on the form ~~((prescribed by rule))~~ approved by the secretary~~((, containing, but not limited to, the following))~~ and must contain:

~~((+))~~ (a) The name, address, and telephone number of the charitable organization;

~~((2))~~ (b) The name(s) under which the charitable organization will solicit contributions;

~~((3))~~ (c) The name, address, and telephone number of the officers of or persons accepting responsibility for the charitable organization;

~~((4))~~ (d) The names of the three officers or employees receiving the greatest amount of compensation from the charitable organization;

~~((5))~~ (e) The purpose of the charitable organization;

~~((6(a)))~~ (f) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; ~~((and~~

~~(b))~~ (g) The name and address of the entity that prepares, reviews, or audits the financial statement of the charitable organization;

~~((7))~~ (h) A solicitation report of the charitable organization for the preceding, completed accounting year including:

~~((a))~~ (i) The types of solicitations conducted;

~~((b))~~ (ii) The ~~((total dollar value of contributions))~~ gross revenue received from ~~((solicitations and from))~~ all ~~((other))~~ sources ~~((received on behalf of the charitable purpose))~~ by or on behalf of the charitable organization before any expenses are paid or deducted;

~~((c))~~ (iii) The total ~~((amount of money applied to charitable purposes, fund raising costs, and other expenses; and~~

~~(d) The name, address, and telephone number of any commercial fund-raiser used by the organization;~~

~~(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and~~

~~(9) The total revenue of the preceding fiscal year.~~

~~The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization))~~ value of contributions received from all solicitations for or on behalf of the charitable organization before any expenses are paid or deducted;

~~(iv) The total value of funds expended for charitable purposes; and~~

~~(v) Total expenses, including expenditures for charitable purposes, fund-raising costs, and administrative expenses;~~

~~(i) The name, address, and telephone number of any commercial fund-raiser retained by the charitable organization; and~~

~~(j) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and~~

~~(k) Such other information the secretary deems necessary by rule.~~

~~(2) The governing body or committee thereof must review and accept any financial report that the charitable organization may be required to file with the office of the secretary.~~

~~(3) Charitable organizations that are required under federal tax law to file an annual return in the form 990 series or any successor series is not required to file a copy of such annual return with the secretary: PROVIDED, That the charitable organization complies with all federal tax law requirements with respect to public inspection of such annual return.~~

~~(4) The president, treasurer, or comparable officer of the organization must sign and date the application. The application ((shall))~~ must be submitted with a

nonrefundable filing fee established in RCW 19.09.062. ~~((If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.))~~

(5) Charitable organizations required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsection (1)(a) through (k) of this section.

NEW SECTION. Sec. 9. A new section is added to chapter 19.09 RCW to read as follows:

The secretary is authorized to adopt rules, in accordance with chapter 34.05 RCW, that establish a set of tiered financial reporting requirements for charitable organizations required to register with the secretary pursuant to this chapter. Rules adopted under this section must include, but not be limited to, substantially the following:

(1) Tier one. Charitable organizations with one million dollars or less in annual gross revenue averaged over the three preceding, completed accounting years must meet the financial reporting requirements specified in RCW 19.09.075;

(2) Tier two. Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, make one of the following financial reporting requirements available to the public upon request, or accessible to the public on the internet:

(a) The federal financial reporting form (990, 990PF, 990EZ, 990T) the organization normally files with the IRS which must be prepared by a certified public accountant or other professional who normally prepares such forms in the ordinary course of their business; or

(b) An audited financial statement prepared by an independent certified public accountant for the preceding accounting year;

(3) Tier three. Charitable organizations with more than three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, obtain an independent, third-party audit of its financial records for the preceding accounting year. This audit report must be made available in paper form to the public upon request or accessible to the public on the internet.

(4) The secretary may waive a tiered reporting requirement as prescribed in rule.

Sec. 10. RCW 19.09.079 and 2010 1st sp.s. c 29 s 13 are each amended to read as follows:

An application for registration and renewal as a commercial fund-raiser ~~((shall))~~ must be submitted ~~((it))~~ on the form ~~((prescribed))~~ approved by the secretary ~~((, containing, but not limited to, the following))~~ and must contain:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

(5) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(6) A solicitation report of the commercial fund-raising entity for the preceding, completed accounting year, including:

(a) The types of fund-raising services conducted;

(b) The names of charitable organizations required to register under RCW ~~((19.09.065))~~ 19.09.075 for whom fund-raising services have been performed;

(c) The total value of contributions received on behalf of charitable organizations required to register under RCW ~~((19.09.065))~~ 19.09.075 by the commercial fund-raiser, affiliate of the commercial fund-raiser, or any entity retained by the commercial fund-raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund-raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund-raiser;

(7) The name, address, and telephone number of any other commercial fund-raiser that was retained in the conduct of providing fund-raising services; ~~((and))~~

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) Such other information the secretary deems necessary by rule.

The application ~~((shall))~~ must be signed by an officer or owner of the commercial fund-raiser and ~~((shall))~~ must be submitted with a nonrefundable fee established in RCW 19.09.062. ~~((If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.))~~

Commercial fund-raisers required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsections (1) through (7) and (9) of this section.

NEW SECTION. Sec. 11. A new section is added to chapter 19.09 RCW to read as follows:

(1) Every commercial fund-raiser must execute a surety bond if it:

(a) Directly or indirectly receives contributions from the public on behalf of any charitable organization;

(b) Is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any other similar method;

(c) Incurs or is authorized to incur expenses on behalf of the charitable organization; or

(d) Has not been registered with the secretary as a commercial fund-raiser for the preceding accounting year.

(2) The surety bond must be executed as principal in the amount prescribed by the secretary in rule. The issuer of the surety bond must be licensed to do business in this state, and must promptly notify the secretary when claims or payments are made against the bond or when the bond is canceled. The bond must be filed with the secretary in the form prescribed by the secretary. The bond must run to the state and to any person who may have a cause of action

against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of solicitations.

The secretary may also provide by rule for the reduction and reinstatement of the bond required by this section.

Sec. 12. RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Registration under this chapter ~~((shall be))~~ is effective for one year or ~~((longer,))~~ as established by the secretary.

(2) ~~((Reregistration))~~ Renewals required under RCW 19.09.075 or 19.09.079 ~~((shall))~~ must be submitted to the secretary no later than the date established by the secretary by rule.

~~((Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7)).~~

~~((4))~~ The secretary ~~((shall))~~ must notify entities registered under this chapter of the need to ~~((reregister))~~ renew upon the expiration of their current registration. The notification ~~((shall))~~ must be ~~((by mail, sent at least))~~ made approximately sixty days prior to the expiration ~~((of their current registration))~~ date and must be made through postal or electronic means. Failure to ~~((register))~~ renew shall not be excused by a failure of the secretary to ~~((mail))~~ send the notice or by an entity's failure to receive the notice.

~~((4))~~ Entities required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1)(a) through (k) or 19.09.079 (1) through (7) and (9).

~~((5))~~ Entities are deemed registered under RCW 19.09.075 or 19.09.079 no sooner than twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

~~((6))~~ If the secretary determines that the application for initial registration or renewal is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

~~((7))~~ If an applicant fails to pay a required fee for any filing, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

Sec. 13. RCW 19.09.097 and 2010 1st sp.s. c 29 s 14 are each amended to read as follows:

(1) No charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to:

(a) The fund-raisers' financial records relating to that charitable organization;

(b) The fund-raisers' operations including without limitation the right to be present during any telephone solicitation; and

(c) The names of all of the fund-raisers' employees or staff who are conducting fund-raising activities or ~~((charitable))~~ solicitations on behalf of the charitable organization. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fundraiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fundraiser for any fund-raising service or activity, the charitable organization and commercial fundraiser shall complete and file a registration form with the secretary. The registration ~~((shall))~~ must be filed by the charitable organization ~~((in))~~ on the form ~~((prescribed))~~ approved by the secretary ~~((The registration shall))~~ and must contain ~~((but not be limited to, the following information))~~:

(a) The name and registration number of the commercial fundraiser;

(b) ~~((The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);~~

~~((c))~~ The name and registration number of the charitable organization;

~~((d))~~ (c) The name of the representative of the commercial fundraiser who will be responsible for the conduct of the fund-raising;

~~((e))~~ (d) The type(s) of service(s) to be provided by the commercial fundraiser;

~~((f))~~ (e) The term dates of the contract and the dates such service(s) will begin and end;

~~((g))~~ (f) The terms of the ~~((agreement))~~ contract between the charitable organization and commercial fundraiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fundraiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund-raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fundraiser, will be identified and used in computing the fee owed to the commercial fundraiser; and

~~((h))~~ (g) The names of any entity, other than the contracting commercial fundraiser to which ~~((more than ten percent))~~ any of the total anticipated fund-raising cost is to be paid, and whether any principal officer or owner of the commercial fundraiser or relative by blood or marriage thereof is an owner or officer of any such entity.

(3) The registration form must be submitted with a nonrefundable filing fee established in RCW 19.09.062 and must be signed by an owner or principal

officer of the commercial fund-raiser and the president, treasurer, trustee or comparable officer of the charitable organization.

(4) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

~~((4) The registration form shall be submitted with a nonrefundable filing fee established in RCW 19.09.062 and shall be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, or comparable officer of the charitable organization.))~~

(5) If the secretary determines that the application is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold documents up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

(6) If an applicant fails to pay the required filing fee, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

Sec. 14. RCW 19.09.100 and 2007 c 471 s 8 and 2007 c 218 s 64 are each reenacted and amended to read as follows:

All entities soliciting contributions for charitable purposes must comply with the requirements of this section except entities exempted from registration are not required to make the disclosures under subsections (1)(c), (4)(b) or (c), and (5)(b) of this section. The following conditions apply to solicitations as defined by RCW 19.09.020:

~~(1) (A charitable organization, whether or not required to register pursuant to this chapter.))~~ Any entity that directly solicits contributions from the public in this state ~~((shall))~~ must make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

~~(c) ((If requested by the solicitee.))~~ The published number ((#)) and web site of the office of the secretary, if requested, for the donor to obtain additional financial ((disclosure)) and other information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(2) A commercial fund-raiser ~~((shall))~~ must meet the required disclosures described in subsection (1) of this section clearly and conspicuously ~~((disclose))~~ at the point of solicitation(=

~~(a) The name of the individual making the solicitation;~~

~~(b))~~ and must also disclose the name of the entity for which the fund-raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted~~((= and~~

~~(e) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made).~~

~~(3) ((A person or organization soliciting charitable contributions by) Telephone ((shall make)) solicitations must include the disclosures required under subsection (1) or (2) of this section ((in the course of the solicitation but)) prior to asking for a ((commitment for a)) contribution ((from the solicitee, and)). The required disclosures must also be provided in writing within five business days to ((any solicitee that)) anyone who makes a pledge ((within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable)) by telephone to donate.~~

(4) In the case of a solicitation by advertisement or mass distribution, including postal, electronic, posters, leaflets, automatic dialing machines, publications, and audio or video broadcasts, it ~~((shall))~~ must be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund-raiser, if it is;

(b) The ~~((notice of solicitation))~~ registration required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial ~~((disclosure))~~ and other information at a published number ~~((it))~~ or web site for the office of the secretary.

(5) A container or vending machine displaying a solicitation must ~~((also))~~ display:

(a) In a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual ((and)) or any commercial fund-raiser responsible for collecting funds placed in the containers or vending machines((; and the following)):

(b) The statement: "This ((charity)) organization is currently registered with the secretary's office under the charitable solicitation act((registration number ---)) - call 1-800-332-4483," if the charitable organization for which funds are solicited is required to register under chapter 19.09 RCW.

~~((A commercial fund-raiser shall not))~~ No entity may represent that tickets to any fund-raising event will be donated for use by another person unless all the following requirements are met:

(a) The ~~((commercial fund-raiser))~~ entity prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the ~~((commercial fund-raiser))~~ entity for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the ~~((commercial fund-raiser shall))~~ entity must give all donated tickets to the persons who made the written commitments to accept them.

(7) ~~((Each person or organization))~~ Any entity soliciting charitable contributions ~~((shall))~~ must not ~~((represent))~~ misrepresent orally or in writing ~~((that))~~:

(a) ~~((The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund-raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization))~~ The tax deductibility of a contribution;

(b) That the person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) That the person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund-raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government ~~((each person or organization))~~ the entity soliciting contributions ~~((shall))~~ must disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No ~~((person))~~ entity may, in conducting any solicitation, use the name "police," "sheriff," ~~(("firefighter,"))~~ "firefighters," or a similar name unless properly authorized by ~~((a bona fide))~~ the police, sheriff, or firefighter organization or police, sheriff, or fire department it is representing. ~~((A proper))~~ Authorization ~~((shall))~~ must be in writing and signed by two authorized officials of the organization or department ~~((and shall))~~. The written authorization must be ~~((filed with the secretary))~~ retained in accordance with RCW 19.09.200.

(10) ~~((A person))~~ An entity may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in writing by the highest ranking official of that organization in this state. The written authorization must be retained in accordance with RCW 19.09.200.

(11) ~~((A charitable organization shall))~~ Entities must comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) ~~((An entity soliciting contributions for a charitable purpose shall not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or~~

~~deceptive. All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.)~~ Any entity required to register under this chapter must not engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(13) Solicitations (~~shall~~) must not be conducted by a charitable organization or commercial fund-raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) (~~No charitable organization or commercial fund-raiser~~) Any entity subject to this chapter (~~may~~) must not use or exploit the fact of registration under this chapter (~~so as~~) to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number"

(15) (~~No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund-raiser unless the charitable organization or commercial fund-raiser is currently registered with the secretary.~~

(16) ~~No charitable organization or commercial fund-raiser may engage in any solicitation for contributions unless it complies with all provisions of this chapter.~~

(17) Any entity soliciting contributions for a charitable purpose must not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising materials, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.

(16) No entity may place a telephone call to a donor or potential donor for the purpose of (~~charitable solicitation~~) soliciting contributions for a charitable purpose, before eight o'clock a.m. or after nine o'clock p.m. pacific time.

(~~18~~) (17) No entity may, when contacting a donor or potential donor for the purpose of (~~charitable solicitation~~) soliciting contributions for a charitable purpose, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact.

(18) Any entity that solicits contributions may not collect or attempt to collect contributions in person or by courier unless:

(a) The contributions are noncash items such as contributions of tangible personal property; or

(b) The solicitations are made in person and the collections, or attempts to collect, are made at the time of the solicitations; or

(c) The contributor has agreed to purchase goods or items in connection with the solicitation and the collection or attempt to collect is made at the time of delivery of the goods or items.

(19) Failure to comply with subsections (1) through (18) of this section is a violation of this chapter.

Sec. 15. RCW 19.09.200 and 1993 c 471 s 11 are each amended to read as follows:

(1) ~~((Charitable organizations and commercial fund-raisers shall))~~ All entities required to register pursuant to this chapter must maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed following the effective period to which they relate. The books and records must contain, at a minimum, documentation supporting the information contained in the solicitation report and written authorization or authorizations required in RCW 19.09.100.

(2) All contracts between commercial fund-raisers and charitable organizations ~~((shall))~~ must be in writing, and true and correct copies of such contracts or records thereof ~~((shall))~~ must be kept on file in the various offices of the charitable organization and the commercial fund-raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the secretary of state, attorney general, or by the county prosecuting attorney. A copy of such contract or record ~~((shall))~~ must be submitted by the charitable organization or commercial fund-raiser, within ten days, following receipt of a written demand ~~((therefor))~~ from the secretary of state, attorney general, or county prosecutor.

Sec. 16. RCW 19.09.210 and 2007 c 471 s 9 are each amended to read as follows:

Upon the request of the secretary of state, attorney general, or the county prosecutor, ~~((a charitable organization or commercial fund-raiser shall))~~ any entity subject to this chapter must submit a financial statement and all requested records containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization or commercial fund-raiser of its activities during or for the same ~~((fiscal))~~ accounting period.

Sec. 17. RCW 19.09.230 and 1994 c 287 s 3 are each amended to read as follows:

No ~~((charitable organization, commercial fund-raiser, or other))~~ entity subject to this chapter may ~~((knowingly))~~:

(1) Use ~~((the))~~ an identical or deceptively similar name, symbol, statement, or emblem so closely related or similar that its use would confuse or mislead the public, of any other entity for the purpose of soliciting contributions from persons in this state without the written consent of such other entity. ~~((If the official name or the "doing business name" being registered is the same or~~

~~deceptively similar as that of another entity, the secretary may request that a copy of the written consent from that entity be filed with the registration. Such consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity. A copy of the written consent must be kept on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. A person))~~ Written consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity.

(2) A copy of the written consent must be retained on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. The secretary may revoke or deny an application for registration that violates this section.

(3) An entity may be deemed to have used the name of another ((person)) entity for the purpose of soliciting contributions if such latter ((person's)) entity's name is listed on any stationery, advertisement, brochure, or correspondence of the ((charitable organization or person)) entity or if such name is listed or represented to anyone who has contributed to, sponsored, or endorsed the ((charitable organization or person)) entity, or its ((or his)) activities.

~~((The secretary may revoke or deny any application for registration that violates this section.))~~ This section does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

Sec. 18. RCW 19.09.271 and 1993 c 471 s 8 are each amended to read as follows:

(1) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and has not registered with the secretary as required by this chapter, the secretary may notify the charitable organization or commercial fund-raiser of its registration requirements by postal or electronic means.

(2) The secretary may notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.

(3) Any ((charitable organization or commercial fund-raiser)) entity who, after notification by the secretary, fails to properly register under this chapter is subject to a late filing fee in an amount to be established by rule by the end of the first business day following the issuance of the notice((-is liable for a late filing fee in an amount to be established by rule of the secretary)). The late filing fee is in addition to any other filing fee provided by this chapter.

~~((2) The secretary shall notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.))~~ (4) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and the entity has not registered with the secretary as required by this chapter, the secretary, after five days notice sent by postal or electronic means to the charitable organization or commercial fund-raiser, may publish a press release in newspapers or on the internet, a notice to the public regarding the entity's unregistered status.

Sec. 19. RCW 19.09.275 and 2003 c 53 s 142 are each amended to read as follows:

(1) Any ~~((person))~~ entity who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any ~~((person))~~ entity who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

Sec. 20. RCW 19.09.276 and 1994 c 287 s 4 are each amended to read as follows:

The secretary may waive penalties that have been set by rule and assessed by the secretary due from a registered ~~((charitable organization))~~ entity previously in good standing that would otherwise be penalized. ~~((A charitable organization))~~ An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse by its ~~((corporate officials))~~ officers, directors, or other ~~((authorized officer of))~~ persons responsible for the missed filing or lapse, notify the secretary in writing. The notification must include the name and mailing address of the organization, the organization's officer to whom correspondence should be sent, and a statement under oath by a responsible officer of the organization, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary shall investigate the circumstances of the missed filing or lapse. If the secretary is satisfied that sufficient exigent or mitigating circumstances exist, that the ~~((organization))~~ entity has demonstrated good faith and a reasonable attempt to comply with the applicable ~~((corporate))~~ charitable solicitation statute~~((s))~~ of this state, the secretary may issue an order allowing relief from the penalty. If the secretary determines the request does not comply with the requirements for relief, the secretary shall deny the relief and state the reasons for the denial. Notwithstanding chapter 34.05 RCW, a denial of relief by the secretary is not reviewable.

Sec. 21. RCW 19.09.277 and 1993 c 471 s 20 are each amended to read as follows:

If it appears to the attorney general that ~~((a person))~~ an entity has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the attorney general may, in the attorney general's discretion, issue an order directing the ~~((person))~~ entity to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The attorney general may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the ~~((person))~~ entity to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice.

Sec. 22. RCW 19.09.279 and 2002 c 74 s 3 are each amended to read as follows:

(1) The secretary may assess against any ~~((person or organization who))~~ entity that violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) ~~((Such person or organization shall))~~ The entity must be afforded the opportunity for a hearing, upon request made to the secretary within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any ~~((person))~~ entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Sec. 23. RCW 19.09.305 and 1993 c 471 s 16 are each amended to read as follows:

When ~~((a person or an organization))~~ an entity registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state ~~((shall))~~ must be an agent of such ~~((person or organization))~~ entity upon whom process may be served. Service on the secretary ~~((shall))~~ must be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a filing fee to be established by rule of the secretary. Thereupon, the secretary ~~((shall))~~ must immediately cause one of the copies ~~((thereof))~~ to be forwarded to the registrant at the most current address shown in the secretary's files. Any service ~~((so had))~~ on the secretary ~~((shall))~~ must be returnable in not less than thirty days.

Any fee under this section ~~((shall))~~ may be taxable as costs in the action.

The secretary ~~((shall))~~ must maintain a record of all process served on the secretary under this section, and ~~((shall))~~ must record the date of service and the secretary's action ~~((with reference thereto)).~~

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law.

Sec. 24. RCW 19.09.315 and 1993 c 471 s 17 are each amended to read as follows:

(1) The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter.

(2) The secretary may provide by rule for the filing of a financial statement by registered entities.

(3) The secretary may issue such publications, reports, or information from the records as may be useful to the solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to cover the costs of preparing, printing, and distributing such publications, in accordance with RCW 43.07.130.

Sec. 25. RCW 19.09.340 and 1983 c 265 s 12 are each amended to read as follows:

(1) ~~((The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application~~

~~of the Consumer Protection Act, chapter 19.86 RCW.))~~ 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.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any ~~((person))~~ entity to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all ~~((persons))~~ entities subject to this chapter.

Sec. 26. RCW 19.09.355 and 2010 1st sp.s. c 29 s 15 are each amended to read as follows:

Except as otherwise provided in this chapter, all fees and other moneys received by the secretary of state under this chapter ~~((shall))~~ must be transmitted to the state treasurer for deposit in the state general fund.

Sec. 27. RCW 19.09.400 and 1993 c 471 s 18 are each amended to read as follows:

The attorney general, in the attorney general's discretion, may:

(1) Annually, or more frequently, make such public or private investigations within or without this state as the attorney general deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any ~~((person))~~ entity has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter.

Sec. 28. RCW 19.09.430 and 1993 c 471 s 22 are each amended to read as follows:

The administrative procedure act, chapter 34.05 RCW, ~~((shall))~~ wherever applicable governs the rights, remedies, and procedures respecting the administration of this chapter.

NEW SECTION. **Sec. 29.** The following acts or parts of acts are each repealed:

(1) RCW 19.09.076 (Charitable organizations—Application for registration—Exemptions—Soliciting contributions) and 2007 c 471 s 4, 1994 c 287 s 1, 1993 c 471 s 4, & 1986 c 230 s 5;

(2) RCW 19.09.190 (Commercial fund-raisers—Surety bond) and 1993 c 471 s 10, 1986 c 230 s 16, 1983 c 265 s 16, 1982 c 227 s 8, 1977 ex.s. c 222 s 9, & 1973 1st ex.s. c 13 s 19;

(3) RCW 19.09.240 (Using similar name, symbol, emblem, or statement) and 1993 c 471 s 14, 1986 c 230 s 15, & 1973 1st ex.s. c 13 s 24;

(4) RCW 19.09.500 (Charitable organizations—Financial reports and information) and 2007 c 471 s 11; and

(5) RCW 19.09.540 (Rules—Tiered independent financial reporting) and 2007 c 471 s 15.

NEW SECTION. Sec. 30. 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 by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 200

[Substitute House Bill 1506]

FIRE SUPPRESSION—LAND OUTSIDE FIRE PROTECTION JURISDICTION

AN ACT Relating to fire suppression efforts and capabilities on unprotected land outside a fire protection jurisdiction; reenacting and amending RCW 64.06.015 and 64.06.020; adding a new section to chapter 52.12 RCW; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.12 RCW to read as follows:

(1) The definitions in this section apply throughout this section and section 2 of this act unless the context clearly requires otherwise.

(a) "Fire protection service agency" or "agency" means any local, state, or federal governmental entity responsible for the provision of firefighting services, including fire protection districts, regional fire protection service authorities, cities, towns, port districts, the department of natural resources, and federal reservations.

(b) "Fire protection jurisdiction" means an area or property located within a fire protection district, a regional fire protection service authority, a city, a town, a port district, lands protected by the department of natural resources under chapter 76.04 RCW, or on federal lands.

(c) "Firefighting services" means the provision of fire prevention services, fire suppression services, emergency medical services, and other services related to the protection of life and property.

(d) "Improved property" means property upon which a structure is located, but does not include roads, bridges, land devoted primarily to growing and harvesting timber, or land devoted primarily to the production of livestock or agricultural commodities for commercial purposes.

(e) "Property" means land, structures, or land and structures.

(f) "Unimproved property" has the same meaning as "unimproved lands" in RCW 76.04.005.

(g) "Unprotected land" means improved property located outside a fire protection jurisdiction.

(2)(a) In order to facilitate the provision of firefighting services to unprotected lands, property owners of unprotected lands are encouraged, to the extent practicable, to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection service agency or agencies for the provision of firefighting services. Any written contractual agreement between a property owner and a fire protection service agency must include, at minimum, a risk assessment of the property as well as a capabilities assessment for the district.

(b) Property owners of unprotected land who choose not to form or annex into a fire protection jurisdiction or to enter into a written contractual agreement with a fire protection agency or agencies for the provision of firefighting services, do so willingly and with full knowledge that a fire protection service agency is not obligated to provide firefighting services to unprotected land.

(3) In the absence of a written contractual agreement, a fire protection service agency may initiate firefighting services on unprotected land outside its fire protection jurisdiction in the following instances: (a) Service was specifically requested by a landowner or other fire service protection agency; (b) service could reasonably be believed to prevent the spread of a fire onto lands protected by the agency; or (c) service could reasonably be believed to substantially mitigate the risk of harm to life or property by preventing the spread of a fire onto other unprotected lands.

(4)(a) The property owner or owners shall reimburse an agency initiating firefighting services on unprotected land outside its fire protection jurisdiction for actual costs that are incurred that are proportionate to the fire itself. Cost recovery is based upon the Washington fire chiefs standardized fire service fee schedule.

(b) If a property owner fails to pay or defaults in payment to an agency for services rendered, the agency is entitled to pursue payment through the collections process outlined in RCW 19.16.500 or through initiation of court action.

NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW to read as follows:

Any fire service protection agency, as well as the firefighters therein, whether volunteer or paid, which takes part in firefighting efforts outside its jurisdiction or provides emergency care, rescue, assistance, or recovery services at the scene of an emergency, is not liable for civil damages resulting from any act or omission in the rendering of such services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

Sec. 3. RCW 64.06.015 and 2009 c 505 s 2 and 2009 c 130 s 1 are each reenacted and amended to read as follows:

(1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- Yes No Don't know A. Do you have legal authority to sell the property? If no, please explain.
 - Yes No Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
 - Yes No Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
 - Yes No Don't know *D. Is there a private road or easement agreement for access to the property?
 - Yes No Don't know *E. Are there any rights-of-way, easements, or access limitations that affect the Buyer's use of the property?
 - Yes No Don't know *F. Are there any written agreements for joint maintenance of an easement or right-of-way?
 - Yes No Don't know *G. Is there any study, survey project, or notice that would adversely affect the property?
 - Yes No Don't know *H. Are there any pending or existing assessments against the property?
 - Yes No Don't know *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that affect future construction or remodeling?
 - Yes No Don't know *J. Is there a boundary survey for the property?
 - Yes No Don't know *K. Are there any covenants, conditions, or restrictions recorded against title to the property?
- 2. WATER**
- A. Household Water
 - (1) Does the property have potable water supply?
 - (2) If yes, the source of water for the property is:
 - Private or publicly owned water system
 - Private well serving only the property
 - * Other water system
 - *If shared, are there any written agreements?
 - * (3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
 - * (4) Are there any problems or repairs needed?
 - (5) Is there a connection or hook-up charge payable before the property can be connected to the water main?
 - (6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)
 - (7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)
 - (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
 - * (b) If yes, has all or any portion of the water right not been used for five or more successive years?
 -
 - (c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?
 - * (8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?
 - B. Irrigation Water
 - (1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)
 - (a) If yes, has all or any portion of the water right not been used for five or more successive years?

- Yes No Don't know (b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
- Yes No Don't know * (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property:
.....
- Yes No Don't know C. Outdoor Sprinkler System
(1) Is there an outdoor sprinkler system for the property?
- Yes No Don't know * (2) If yes, are there any defects in the system?
- Yes No Don't know * (3) If yes, is the sprinkler system connected to irrigation water?
- 3. SEWER/SEPTIC SYSTEM**
- A. The property is served by:
 Public sewer system
 On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
 Other disposal system, please describe:
.....
- Yes No Don't know B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
- Yes No Don't know C. If the property is connected to an on-site sewage system:
.....
- Yes No Don't know * (1) Was a permit issued for its construction?
- Yes No Don't know * (2) Was it approved by the local health department or district following its construction?
- Yes No Don't know (3) Is the septic system a pressurized system?
- Yes No Don't know (4) Is the septic system a gravity system?
- Yes No Don't know * (5) Have there been any changes or repairs to the on-site sewage system?
- Yes No Don't know (6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain:
.....
- Yes No Don't know * (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?
.....
- 4. ELECTRICAL/GAS**
- A. Is the property served by natural gas?
- B. Is there a connection charge for gas?
- C. Is the property served by electricity?
- D. Is there a connection charge for electricity?
- *E. Are there any electrical problems on the property?
.....
- 5. FLOODING**
- A. Is the property located in a government designated flood zone or floodplain?
- 6. SOIL STABILITY**
- *A. Are there any settlement, earth movement, slides, or similar soil problems on the property?
.....
- 7. ENVIRONMENTAL**
- *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?
- *B. Does any part of the property contain fill dirt, waste, or other fill material?
- *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

Yes No Don't know

D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

*F. Has the property been used for commercial or industrial purposes?

*G. Is there any soil or groundwater contamination?

*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

*I. Has the property been used as a legal or illegal dumping site?

*J. Has the property been used as an illegal drug manufacturing site?

*K. Are there any radio towers that cause interference with cellular telephone reception?

8. HOMEOWNERS' ASSOCIATION/ COMMON INTERESTS

A. Is there a homeowners' association? Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:
.....

B. Are there regular periodic assessments:
\$ per Month Year

Other

*C. Are there any pending special assessments?

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

9. OTHER FACTS

*A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property?
.....

*B. Does the property have any plants or wildlife that are designated as species of concern, or listed as threatened or endangered by the government?

*C. Is the property classified or designated as forest land or open space?
.....

D. Do you have a forest management plan? If yes, attach.

*E. Have any development-related permit applications been submitted to any government agencies?
.....

If the answer to E is "yes," what is the status or outcome of those applications?
.....

E. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?
.....

10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Sec. 4. RCW 64.06.020 and 2009 c 505 s 3 and 2009 c 130 s 2 are each reenacted and amended to read as follows:

(1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

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FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST

INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- | | | | | | | |
|--------------------------|-----|--------------------------|----|--------------------------|------------|---|
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | 1. TITLE |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | A. Do you have legal authority to sell the property? If no, please explain. |
| | | | | | | *B. Is title to the property subject to any of the following? |
| | | | | | | (1) First right of refusal |
| | | | | | | (2) Option |
| | | | | | | (3) Lease or rental agreement |
| | | | | | | (4) Life estate? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *C. Are there any encroachments, boundary agreements, or boundary disputes? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *D. Is there a private road or easement agreement for access to the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *F. Are there any written agreements for joint maintenance of an easement or right-of-way? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *G. Is there any study, survey project, or notice that would adversely affect the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *H. Are there any pending or existing assessments against the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *J. Is there a boundary survey for the property? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *K. Are there any covenants, conditions, or restrictions recorded against the property? |
| | | | | | | 2. WATER |
| | | | | | | A. Household Water |
| | | | | | | (1) The source of water for the property is: |
| | | | | | | <input type="checkbox"/> Private or publicly owned water system |
| | | | | | | <input type="checkbox"/> Private well serving only the subject property |
| | | | | | | * <input type="checkbox"/> Other water system |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *If shared, are there any written agreements? |
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Don't know | *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source? |

- Yes No Don't know * (3) Are there any problems or repairs needed?
- Yes No Don't know (4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
- Yes No Don't know * (5) Are there any water treatment systems for the property? If yes, are they Leased Owned
- Yes No Don't know * (6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
- Yes No Don't know (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
- Yes No Don't know * (b) If yes, has all or any portion of the water right not been used for five or more successive years?
- Yes No Don't know * (7) Are there any defects in the operation of the water system (e.g. pipes, tank, pump, etc.)?
.....
- Yes No Don't know B. Irrigation Water
(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?
- Yes No Don't know * (a) If yes, has all or any portion of the water right not been used for five or more successive years?
- Yes No Don't know * (b) If so, is the certificate available? (If yes, please attach a copy.)
- Yes No Don't know * (c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed?
.....
- Yes No Don't know * (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:
.....
- Yes No Don't know C. Outdoor Sprinkler System
(1) Is there an outdoor sprinkler system for the property?
- Yes No Don't know * (2) If yes, are there any defects in the system?
- Yes No Don't know * (3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

- A. The property is served by:
 - Public sewer system,
 - On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
 - Other disposal system, please describe:
.....

- Yes No Don't know B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.
.....
- Yes No Don't know *C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
- Yes No Don't know D. If the property is connected to an on-site sewage system:
 *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
 (2) When was it last pumped ?

- Yes No Don't know *(3) Are there any defects in the operation of the on-site sewage system?
 Don't know (4) When was it last inspected?

 By whom:
 Don't know (5) For how many bedrooms was the on-site sewage system approved?
 bedrooms
- Yes No Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:
- Yes No Don't know *F. Have there been any changes or repairs to the on-site sewage system?
- Yes No Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

- Yes No Don't know *H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

- Yes No Don't know *A. Has the roof leaked within the last five years?
- Yes No Don't know *B. Has the basement flooded or leaked?
- Yes No Don't know *C. Have there been any conversions, additions, or remodeling?
 *(1) If yes, were all building permits obtained?
- Yes No Don't know *(2) If yes, were all final inspections obtained?
- Yes No Don't know D. Do you know the age of the house? If yes, year of original construction:

[] Yes [] No [] Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?

[] Yes [] No [] Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations, Chimneys, Doors, Ceilings, Pools, Sidewalks, Garage Floors, Other, Decks, Interior Walls, Windows, Slab Floors, Hot Tub, Outbuildings, Walkways, Wood Stoves, Exterior Walls, Fire Alarm, Patio, Driveways, Sauna, Fireplaces, Siding

[] Yes [] No [] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

[] Yes [] No [] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[] Yes [] No [] Don't know I. Is the attic insulated?

[] Yes [] No [] Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

[] Yes [] No [] Don't know Electrical system, including wiring, switches, outlets, and service

[] Yes [] No [] Don't know Plumbing system, including pipes, faucets, fixtures, and toilets

[] Yes [] No [] Don't know Hot water tank

[] Yes [] No [] Don't know Garbage disposal

[] Yes [] No [] Don't know Appliances

[] Yes [] No [] Don't know Sump pump

[] Yes [] No [] Don't know Heating and cooling systems

[] Yes [] No [] Don't know Security system

[] Owned [] Leased

Other

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

[] Yes [] No [] Don't know Security system

[] Yes [] No [] Don't know Tanks (type):

[] Yes [] No [] Don't know Satellite dish

Other:

*C. Are any of the following kinds of wood burning appliances present at the property?

[] Yes [] No [] Don't know (1) Woodstove?

[] Yes [] No [] Don't know (2) Fireplace insert?

[] Yes [] No [] Don't know (3) Pellet stove?

[] Yes [] No [] Don't know (4) Fireplace?

[] Yes [] No [] Don't know If yes, are all of the (1) woodstoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?

Yes No Don't know D. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?

6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

Yes No Don't know A. Is there a Homeowners' Association? Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:

Yes No Don't know B. Are there regular periodic assessments:
\$ per Month Year
 Other

Yes No Don't know *C. Are there any pending special assessments?

Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

Yes No Don't know *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

Yes No Don't know *B. Does any part of the property contain fill dirt, waste, or other fill material?

Yes No Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

Yes No Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

Yes No Don't know *F. Has the property been used for commercial or industrial purposes?

Yes No Don't know *G. Is there any soil or groundwater contamination?

Yes No Don't know *H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?

- Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?
- Yes No Don't know *K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *B. Did any previous owner make any alterations to the home?
- Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

- Yes No Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/ we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Passed by the House April 13, 2011.
Passed by the Senate April 7, 2011.
Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 201

[House Bill 1520]

STATE ROUTE NUMBER 527

AN ACT Relating to state route number 527; and amending RCW 47.17.745.

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

Sec. 1. RCW 47.17.745 and 1970 ex.s. c 51 s 150 are each amended to read as follows:

A state highway to be known as state route number 527 is established as follows:

Beginning at a junction with state route number ~~((522))~~ 405 in the vicinity of Bothell, thence northerly to a junction with state route number 5 in ~~((the vicinity south of))~~ Everett.

Passed by the House February 25, 2011.
Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 202

[House Bill 1521]

INNOVATION SCHOOLS—RECOGNITION

AN ACT Relating to recognizing Washington innovation schools; adding a new section to chapter 28A.300 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that Washington has a long history of providing legal, financial, and political support for a wide range of innovative programs and initiatives and that these can and do operate successfully in public schools through the currently authorized governance structure of locally elected boards of directors of school districts.

(2) Examples of innovation schools can be found all across the state including, but not limited to:

(a) The Vancouver school of arts and academics that offers students beginning in sixth grade the opportunity to immerse themselves in the full range of the arts, including dance, music, theater, literary arts, visual arts, and moving image arts, as well as all levels of core academic courses;

(b) Thornton Creek elementary school in Seattle, an award-winning parent-initiated learning option based on the expeditionary learning outward bound model;

(c) The technology access foundation academy, a unique public-private partnership with the Federal Way school district that offers a rigorous and relevant curriculum through project-based learning, full integration of technology, and a small learning community intended to provide middle and high school students the opportunity for success in school and college;

(d) Talbot Hill elementary school in Renton, where students participate in a microsociety program that includes selecting a government, conducting business and encouraging entrepreneurialism, and providing community services such as banking, newspaper, post office, and courts;

(e) The Tacoma school of the arts, where sophomores through seniors form a cohesive, full-time learning community to study the full range of humanities, mathematics, science, and language as well as build a broad foundation in all forms of the arts, culminating with an in-depth senior arts project that showcases each student's talent and interest;

(f) The SPRINT program at Shaw middle school in Spokane, an alternative learning community for students in seventh and eighth grade proposed and created by a group of parents who wish to be very actively involved in their students' education;

(g) Puesta del sol elementary school in Bellevue, offering a diverse multicultural program and Spanish language immersion beginning in kindergarten;

(h) The Washington national guard youth challenge program operated in collaboration with the Bremerton school district that offers high-risk youth a rigorous and structured residential program that builds students' academic,

social, and emotional skills, and physical fitness while providing up to one year of high school credits toward graduation;

(i) The Lincoln center program at Lincoln high school in Tacoma, an extended day program that has virtually eliminated the academic achievement gap and significantly boosted attendance and test scores for racially diverse, low-income, and highly mobile students;

(j) Delta high school, a science, technology, engineering, and math-focused school option for students in the Tri-Cities operating in cooperation with three school districts, the regional skill center, local colleges and universities, and the business community; and

(k) Aviation high school in the Highline school district, offering a project-based curriculum and learning environment centered on an aviation and aeronautics theme with strong business and community support.

(3) Therefore, the legislature intends to encourage additional innovation schools by disseminating information about current models and recognizing the effort and commitment that goes into their creation and operation.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The legislature finds that innovation schools accomplish the following objectives:

(a) Provide students and parents with a diverse array of educational options;

(b) Promote active and meaningful parent and community involvement and partnership with local schools;

(c) Serve as laboratories for educational experimentation and innovation;

(d) Respond and adapt to different styles, approaches, and objectives of learning;

(e) Hold students and educators to high expectations and standards; and

(f) Encourage and facilitate bold, creative, and innovative educational ideas.

(2) The office of the superintendent of public instruction shall develop basic criteria and a streamlined review process for identifying Washington innovation schools. Any public school, including those with institution of higher education partners, may be nominated by a community, organization, school district, institution of higher education, or through self-nomination to be designated as a Washington innovation school. If the office of the superintendent of public instruction finds that the school meets the criteria, the school shall receive a designation as a Washington innovation school. Within available funds, the office shall develop a logo, certificate, and other recognition strategies to encourage and highlight the accomplishments of innovation schools.

(3) The office of the superintendent of public instruction shall:

(a) Create a page on the office web site to highlight examples of Washington innovation schools, including those with institution of higher education partners, that includes links to research literature and national best practices, as well as summary information and links to the web sites of Washington innovation schools. The office is encouraged to offer an educational administrator intern the opportunity to create the web page as a project toward completion of his or her administrator certificate; and

(b) Publicize the Washington innovation school designation and encourage schools, communities, institutions of higher education, and school districts to access the web site and create additional models of innovation.

Passed by the House April 13, 2011.
Passed by the Senate April 4, 2011.
Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 203

[Substitute House Bill 1524]

INTERNATIONAL BACCALAUREATE DIPLOMAS

AN ACT Relating to recognizing the international baccalaureate diploma; amending RCW 28A.230.170; reenacting and amending RCW 28A.230.090; and adding a new section to chapter 28A.230 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.230 RCW to read as follows:

(1) A student who fulfills the requirements specified in subsection (3) of this section toward completion of an international baccalaureate diploma programme is considered to have satisfied state minimum requirements for graduation from a public high school, except that:

(a) The provisions of RCW 28A.655.061 regarding the certificate of academic achievement or RCW 28A.155.045 regarding the certificate of individual achievement apply to students under this section; and

(b) The provisions of RCW 28A.230.170 regarding study of the United States Constitution and the Washington state Constitution apply to students under this section.

(2) School districts may require students under this section to complete local graduation requirements that are in addition to state minimum requirements before issuing a high school diploma under RCW 28A.230.120. However, school districts are encouraged to waive local requirements as necessary to encourage students to pursue an international baccalaureate diploma.

(3) To receive a high school diploma under this section, a student must complete and pass all required international baccalaureate diploma programme courses as scored at the local level; pass all internal assessments as scored at the local level; successfully complete all required projects and products as scored at the local level; and complete the final examinations administered by the international baccalaureate organization in each of the required subjects under the diploma programme.

Sec. 2. RCW 28A.230.090 and 2009 c 548 s 111 and 2009 c 223 s 2 are each reenacted and amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for students, except as provided in section 1 of this act and except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the

culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2)(a) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements.

(c) The state board shall forward any proposed changes to the high school graduation requirements to the education committees of the legislature for review and to the quality education council established under RCW 28A.290.010. The legislature shall have the opportunity to act during a regular legislative session before the changes are adopted through administrative rule by the state board. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized and funded by the legislature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit.

Sec. 3. RCW 28A.230.170 and 2006 c 263 s 403 are each amended to read as follows:

The study of the Constitution of the United States and the Constitution of the state of Washington shall be a condition prerequisite to graduation from the public and private high schools of this state. The superintendent of public instruction shall provide by rule for the implementation of this section. The superintendent of public instruction may adopt a rule permitting students who meet the criteria in section 1 of this act to meet the prerequisite through noncredit-based study.

Passed by the House February 25, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 204

[Substitute House Bill 1538]

ANIMAL DISEASE TRACEABILITY

AN ACT Relating to animal health inspections; amending RCW 16.36.025, 16.58.100, 43.23.230, 16.36.040, 16.36.050, 16.36.060, 16.36.113, 16.36.140, 16.57.160, and 16.57.360; reenacting and amending RCW 16.36.005; adding new sections to chapter 16.36 RCW; adding a new section to chapter 16.57 RCW; and prescribing penalties.

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

Sec. 1. RCW 16.36.025 and 1998 c 8 s 19 are each amended to read as follows:

The director may collect moneys to recover the reasonable costs of purchasing, printing, and distributing ((certificates)) official individual identification devices or methods, regulatory forms, and other supplies ((to veterinarians)). All funds received under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to cover the costs associated with this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 16.36 RCW to read as follows:

(1) The director shall adopt by rule a fee per head on cattle sold or slaughtered in the state or transported out of the state to administer animal disease traceability activities for cattle. The fee must be paid by:

- (a) Sellers of cattle sold in the state, without exception;
- (b) Owners of cattle that are transported out of Washington, unless an exception is provided by rule; and
- (c) Owners of cattle slaughtered in the state.

(2) The fee adopted by the department may not exceed forty cents per head of cattle.

(3)(a) Except where the seller presents proof that the fee has been paid by a meat processor under (c) of this subsection, the fee required in this section must be paid by the owner of cattle receiving a livestock inspection issued by the department under chapter 16.57 RCW in the same manner as livestock inspection fees are collected under RCW 16.57.220.

(b) The fee required in this section must be paid from the owner of cattle not receiving a livestock inspection issued by the department under chapter 16.57 RCW by the fifteenth day of the month following the month the sale or transportation out of state occurred, or at a different time as designated by rule.

(c) When cattle are slaughtered, the fee required by this section must be collected from the seller of the cattle by the meat processor. The meat processor must transmit the fee to the department by the fifteenth day of the month following the month the transaction occurred, or at a different time as designated by rule. When cattle owned by a meat processor are slaughtered, the fee must be paid by the meat processor.

(4) All fees received by the department under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to carry out animal disease traceability activities for cattle and to compensate the livestock identification program for data and fee collection.

(5) Any person failing to pay the fee established in this section has committed a class 1 civil infraction punishable as provided in RCW 7.80.120. Each violation is a separate and distinct offense.

NEW SECTION. Sec. 3. A new section is added to chapter 16.36 RCW to read as follows:

By December 1st of each year, the department shall submit an activity report and financial statement on the implementation of the animal disease traceability activities to the animal disease traceability advisory committee created in section 5 of this act.

Sec. 4. RCW 16.58.100 and 2003 c 326 s 54 are each amended to read as follows:

(1) The director shall conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. These audits shall be for the purpose of determining if the cattle correlate with the inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his or her assurance that inspected cattle were not commingled with uninspected cattle.

(2) The department shall conduct an audit to determine compliance with section 2 of this act at the time of conducting audits under subsection (1) of this section.

***NEW SECTION. Sec. 5.** A new section is added to chapter 16.36 RCW to read as follows:

(1) *The director shall establish an animal disease traceability advisory committee that will serve in an advisory capacity to the director and must meet at least twice a year.*

(2) *The animal disease traceability advisory committee is composed of eight members appointed by the director. Two members must represent cow-calf producers, and one member must represent each of the following groups: Cattle feeders, dairy farmers, public livestock markets, meat processors, and a*

statewide agricultural association. The director or the director's designee must also serve on the animal disease traceability advisory committee. In making appointments, the director shall solicit nominations from organizations representing these groups statewide. The animal disease traceability advisory committee shall elect a member to serve as chair of the animal disease traceability advisory committee.

(3) Membership of the animal disease traceability advisory committee may be expanded by a unanimous vote of its members.

(4) The animal disease traceability advisory committee must work with the director to develop a plan to implement as quickly as practicable the electronic transfer of traceability data.

(5) Animal disease traceability advisory committee members must also work with the director to:

(a) Communicate effectively to their respective industry associations as to the progress of the animal disease traceability activities and to encourage the state's cattle industry to participate in the animal disease traceability program;

(b) Utilize new technology within the department and industry that enhances the animal disease traceability program within existing funding;

(c) Study national industry trends in traceability of animal movements and related animal health issues; and

(d) Discuss other matters as mutually agreed upon by the director and the animal disease traceability advisory committee for the benefit of the animal disease traceability program.

(6) Animal disease traceability advisory committee members serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the animal disease traceability advisory committee to stagger the expiration of the initial terms. The members serve without compensation.

*Sec. 5 was vetoed. See message at end of chapter.

Sec. 6. RCW 16.36.005 and 2010 c 66 s 1 are each reenacted and amended to read as follows:

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

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

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

(3) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official electronic or paper form from the state of origin or from the animal and plant health inspection service (APHIS) of the United States department of agriculture, executed by a licensed and accredited veterinarian or a veterinarian approved by the animal and plant health inspection service. "Certificate of veterinary inspection" is also known as an "official health certificate."

(4) "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.

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

(6) "Department" means the department of agriculture of the state of Washington.

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

(8) "Director" means the director of the department or his or her authorized representative.

(9) "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 77.115 RCW.

(10) "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.

(11) "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.

(12) "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.

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

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

(15) "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.

(16) "Person" means a person, persons, firm, or corporation.

(17) "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.

(18) "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.

(19) "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.

(20) "Meat processors" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.).

(21) "Sold" means sale, trade, gift, barter, or any other action that constitutes a change of ownership.

Sec. 7. RCW 43.23.230 and 1988 c 254 s 1 are each amended to read as follows:

(1) The agricultural local fund is hereby established in the custody of the state treasurer. The fund shall consist of such money as is directed by law for deposit in the fund, and such other money not subject to appropriation that the department authorizes to be deposited in the fund. Any money deposited in the fund, the use of which has been restricted by law, may only be expended in accordance with those restrictions. The department may make disbursements from the fund. The fund is not subject to legislative appropriation.

(2) There is created within the agricultural local fund the animal disease traceability account which must be used to account for the costs associated with the implementation of chapter 16.36 RCW.

Sec. 8. RCW 16.36.040 and 1998 c 8 s 4 are each amended to read as follows:

(1) The director may adopt and enforce rules necessary 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 animals in this state;

(b) Governing the inspection and testing of all animals within or about to be imported into this state; (~~and~~)

(c) Designating any disease as a reportable disease; ~~and~~

(d) Designating when a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule must designate a destination with a physical address for animals entering Washington and when those animals must be delivered or transported directly to the physical address of that destination.

(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. 9. RCW 16.36.050 and 2010 c 66 s 2 are each amended to read as follows:

(1) It is unlawful for a person to bring an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets the Washington state animal health requirements. This subsection does not apply to:

(a) ~~((Livestock, which are governed by))~~ Those animals that qualify for an exemption in RCW 16.36.140; or

(b) Other animals exempted by the director by rule.

(2) For animals imported into Washington it is unlawful for a person to transport or deliver an animal to any physical address other than the physical address of the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule. The director may exempt animals from this requirement by rule.

(3) It is unlawful for a person to intentionally falsely make, complete, alter, use, or sign a certificate of veterinary inspection or official animal health document of the department.

~~((3))~~ (4) It is unlawful for a person to intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device.

~~((4))~~ (5) It is unlawful for a person to 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.

~~((5))~~ (6) It is unlawful for a person to willfully fail to comply with or to violate any rule or order adopted by the director under this chapter.

Sec. 10. RCW 16.36.060 and 2010 c 66 s 4 are each amended to read as follows:

(1) The director has the authority to enter a property at any reasonable time to:

(a) Conduct tests, examinations, or inspections to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the property or that have been on the property are infected with or have been exposed to disease; and

(b) Determine, when there is reasonable cause to investigate, whether ~~((livestock))~~ animals on the property have been imported into Washington state in violation of requirements of this chapter, and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations.

(2) It is unlawful for any person to interfere with investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with tests, inspections, or examinations conducted pursuant to subsection (1) of this section.

(3) If the director is denied access to a property or animals for purposes of this chapter, or a person fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or owner's agent and secure consent. The court may issue a search warrant authorizing access to any animal or property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or

property, or to take samples, and examine and copy records, and may authorize seizure or destruction of property.

Sec. 11. RCW 16.36.113 and 2007 c 71 s 4 are each amended to read as follows:

(1) Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

Sec. 12. RCW 16.36.140 and 2010 c 66 s 3 are each amended to read as follows:

(1) It is unlawful for a person to bring ~~((livestock))~~ an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the ~~((livestock))~~ animal meets Washington state animal health requirements. This subsection does not apply to ~~((livestock))~~ animals that:

- (a) Have been exempted by the director by rule; or
- (b) Will be delivered within twelve hours after entry into Washington state to:

- (i) An approved, inspected feed lot for slaughter;
- (ii) A federally inspected slaughter plant; or
- (iii) A licensed public livestock market for sale and subsequent delivery within twelve hours to:

- (A) An approved, inspected feed lot for slaughter; or
- (B) A federally inspected slaughter plant.

(2) The director may monitor ~~((livestock))~~ animals entering Washington state. Persons importing, transporting, receiving, feeding, or housing imported ~~((livestock))~~ animals shall:

(a) Comply with the requirement and any exemptions specified in subsection (1) of this section; and

(b) Make the ~~((livestock))~~ animal and related records available for inspection by the director.

(3) ~~((The department may charge a time and mileage fee for inspecting livestock and related records during an investigation of a proven violation of this section. The fee is eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant~~

~~to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.~~

(4)) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this section.

Sec. 13. RCW 16.57.160 and 2010 c 66 s 6 are each amended to read as follows:

(1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification; ~~((and))~~

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle.

NEW SECTION. **Sec. 14.** A new section is added to chapter 16.57 RCW to read as follows:

It is unlawful for a person to transport or deliver cattle or horses to any destination other than the physical address of the destination designated on an inspection certificate, certificate of permit, or other transportation document when required by law or rule. The director may exempt cattle and horses from this requirement by rule.

Sec. 15. RCW 16.57.360 and 2003 c 326 s 42 are each amended to read as follows:

~~(1)(a)~~ The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

~~(b)~~ The violation of any provision of this chapter and/or rules adopted under this chapter shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Section 5, Substitute House Bill 1538 entitled:

"AN ACT Relating to animal health inspections."

Section 5 of this bill establishes a formal Animal Disease Traceability Advisory Committee to serve in an advisory capacity to the Department of Agriculture for this program. I am vetoing Section 5 of this bill. I understand the importance of involving livestock growers, feeders, farmers, and business interests in guiding this disease traceability program, but that does not necessitate creating a formal committee in statute. However, along with this veto, I am directing the director of the Department of Agriculture to convene an informal advisory group made up of key livestock industry representatives to assist the department as it implements the animal disease traceability program.

For these reasons, I have vetoed Section 5 of Substitute House Bill 1538.

With the exception of Section 5 Substitute House Bill 1538 is approved."

CHAPTER 205

[House Bill 1544]

BASIC HEALTH PLAN—ELIGIBILITY

AN ACT Relating to restricting the eligibility for the basic health plan to the basic health transition eligibles population under the medicaid waiver; reenacting and amending RCW 70.47.020; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 70.47.020 and 2009 c 568 s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees

provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Until March 1, 2011, whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; ~~((and))~~

(vii) Who is not receiving medical assistance administered by the department of social and health services; and

(viii) After February 28, 2011, who is in the basic health transition eligibles population under 1115 medicaid demonstration project number 11-W-00254/10;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

NEW SECTION. Sec. 2. The legislature intends to define eligibility for the basic health plan for periods subsequent to expiration of the 1115 medicaid demonstration project based upon recommendations from its joint select committee on health reform regarding whether the basic health plan should be offered as an enrollment option for persons who qualify for federal premium subsidies under the federal patient protection and affordable care act of 2010.

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 by the House April 18, 2011.

Passed by the Senate March 23, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 206

[Engrossed Substitute House Bill 1547]

CRIMINAL ALIEN OFFENDERS—DEPORTATION

AN ACT Relating to the deportation of criminal alien offenders; amending RCW 9.94A.685 and 10.40.200; adding a new section to chapter 9.94A RCW; and declaring an emergency.

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

Sec. 1. RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read as follows:

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and ~~((naturalization service))~~ customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime

or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee (~~find [finds] that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction~~) has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

~~((3))~~ (3) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030(~~or any other offense that is a crime against a person~~).

~~((4))~~ (3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and (~~naturalization service~~) customs enforcement agency for deportation. Upon the release of an offender to the immigration and (~~naturalization service~~) customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect (~~until the expiration of the offender's conditional release~~) indefinitely.

~~((5))~~ (4) Upon arrest of an offender, the department (~~shall~~) may seek extradition as necessary and the offender (~~shall~~) may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

~~((6))~~ (5) Alien offenders released to the immigration and (~~naturalization service~~) customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

~~((7))~~ (6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

~~((8))~~ (7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after the effective date of this section.

****NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:***

(1) The department shall provide a written notice of rights in removal proceedings to all offenders in the department's custody who are subject to early release pursuant to RCW 9.94A.685. The notice shall be provided as early in the removal process as feasible.

(2) *The department shall work in conjunction with a qualified nonprofit legal services organization in the state recognized by the department of justice pursuant to 8 C.F.R. 1003.61, to create the written notice required by subsection (1) of this section. A written notice containing the advisals given to an individual at the first master calendar hearing in a removal proceeding meets the requirements of this section.*

*Sec. 2 was vetoed. See message at end of chapter.

*Sec. 3. *RCW 10.40.200 and 1983 c 199 s 1 are each amended to read as follows:*

(1) *The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.*

(2) *Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgement by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.*

(3) *With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid.*

(4) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall advise the defendant that, pursuant to RCW 9.94A.685, the defendant may be subject to early release from custody for removal from the

United States as a consequence of conviction and that the defendant may be able to contest a removal order.

*Sec. 3 was vetoed. See message at end of chapter.

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 by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Sections 2 and 3, Engrossed Substitute House Bill 1547 entitled:

"AN ACT Relating to the deportation of criminal alien offenders."

Section 2 requires the Department of Corrections to provide written notice of rights in removal proceedings to all offenders in the department's custody subject to potential conditional release under this statute. Advising offenders of these rights is the responsibility of the federal government at the time removal proceedings are initiated.

Section 3 requires a court to advise a defendant that he or she may be subject to early release from custody for removal from the United States as a consequence of conviction and that the defendant may be able to contest a removal order. Current law and court practices and procedures provide defendants with adequate notice of potential deportation consequences of a plea of guilty.

For these reasons, I have vetoed Sections 2 and 3 of Engrossed Substitute House Bill 1547.

With the exception of Sections 2 and 3 Engrossed Substitute House Bill 1547 is approved."

CHAPTER 207

[House Bill 1582]

FOREST PRACTICES—LAND CONVERSION

AN ACT Relating to forest practices applications leading to conversion of land for development purposes; and amending RCW 76.09.050, 76.09.240, and 43.21C.037.

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

Sec. 1. RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an

application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On ~~((lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (e)))~~ forest lands that are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II:

(a) On ~~((lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (e)))~~ forest lands that are being converted to another use;

~~(b) On~~ lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development~~((:));~~;

~~((d) involving))~~ (c) That involve timber harvesting or road construction on forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application~~((:));~~ and/or

~~((e)))~~ (d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the

department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to

continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to ~~((lands either:~~

~~(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or~~

~~(ii) On))~~ forest lands that ~~((have or))~~ are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to ~~((subparagraphs))~~ ~~(b)((i) and (ii))~~ of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

Sec. 2. RCW 76.09.240 and 2010 c 219 s 1 are each amended to read as follows:

(1)(a) Counties planning under RCW 36.70A.040 with a population greater than one hundred thousand, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, city, or town, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forest land of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) ~~((Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~(B))~~ Forest lands that ~~((have or))~~ are being converted to another use; or

~~((C))~~ ~~(B)~~ Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

(i) ~~((Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;~~

~~(ii))~~ Forest lands that ~~((have or))~~ are being converted to another use; or

~~((iii))~~ ~~(ii)~~ Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if

applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to ~~((July 22, 2007,))~~ the effective date of this section are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section except as necessary to ensure consistency with Class IV forest practices as defined in RCW 76.09.050.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only ~~((; or (i)))~~ where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands ~~((have been or will be))~~ are being converted to a use other than commercial forest product production ~~((; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW))~~: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forest land by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the landowner's legal name, address, telephone number, and parcel number.

Sec. 3. RCW 43.21C.037 and 1997 c 173 s 6 are each amended to read as follows:

(1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW 76.09.050, are not subject to the requirements of RCW 43.21C.030(2)(c) as now or hereafter amended.

(2) When the applicable county, city, or town requires a license in connection with any proposal involving forest practices:

(a) ~~((on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b)))~~ On forest lands that ~~((have or))~~ are being converted to another use~~((;))~~; or

~~((c))~~ (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, then the local government, rather than the department of natural resources, is responsible for any detailed statement required under RCW 43.21C.030(2)(c).

(3) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter. The evaluation shall be made within ten days from the date the department receives the application. A Class IV forest practice application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. This section shall not be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action regarding a Class IV forest practice

taken by that governmental entity concerning the land on which forest practices will be conducted.

Passed by the House April 13, 2011.

Passed by the Senate March 30, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 208

[House Bill 1586]

HIGHER EDUCATION—RESEARCH UNIVERSITIES—BRANCH CAMPUSES— DOCTORATE PROGRAMS

AN ACT Relating to the provision of doctorate programs at the research university branch campuses in Washington; and amending RCW 28B.45.014.

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

Sec. 1. RCW 28B.45.014 and 2005 c 258 s 2 are each amended to read as follows:

(1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and ~~((master's level))~~ graduate education in underserved urban areas of the state in collaboration with community and technical colleges. The top priority for each of the campuses is to expand courses and degree programs for transfer and graduate students. New degree programs should be driven by the educational needs and demands of students and the community, as well as the economic development needs of local businesses and employers.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and ~~((master's level))~~ graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year university or be removed from designation as a branch campus entirely.

(5) The legislature recognizes that size, mix of degree programs, and proportion of lower versus upper division and graduate enrollments are factors

that affect costs at branch campuses. However over time, the legislature intends that branch campuses be funded more similarly to regional universities.

(6) ~~((In consultation with)) Subject to approval by the higher education coordinating board, ((a branch campus may propose legislation to authorize practice oriented or professional doctoral programs if: (a) Unique research facilities and equipment are located near the campus; or (b) the campus can clearly demonstrate student and employer demand in the region that is linked to regional economic development)) in accordance with RCW 28B.76.230, research universities are authorized to develop doctoral degree programs at their branch campuses.~~

(7) ~~((It is not the legislature's intent to have each campus chart its own future path without legislative guidance. Instead, the legislature intends to consider carefully the mission and model of education that best suits each campus and best meets the needs of students, the community, and the region.)) The higher education coordinating board shall monitor and evaluate ((the addition of lower division students to)) growth of the branch campuses and periodically report and make recommendations to the higher education committees of the legislature to ensure the campuses continue to follow the priorities established under this chapter.~~

Passed by the House March 2, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 209

[Substitute House Bill 1600]

ELEMENTARY MATH SPECIALISTS

AN ACT Relating to elementary math specialists; adding a new section to chapter 28A.410 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 significant changes have been made in recent years to improve Washington's mathematics standards. Additional mathematics coursework, at a more rigorous level, will be required for high school graduation. Efforts to increase the rigor of high school mathematics will ultimately not be successful unless students in elementary and middle school are better prepared in mathematics. Successful preparation is more likely to occur if students have the opportunity to receive instruction from a teacher with proficiency in both mathematics content and effective instructional methods in mathematics for elementary and middle school students. It is the legislature's intent to encourage elementary teachers who enjoy and excel in mathematics to become specialists, and to encourage school districts to assign these specialists to teach elementary and middle school mathematics, thereby transmitting both their expertise and their enthusiasm for the subject to their students.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.410 RCW to read as follows:

(1) For the purposes of this section, an elementary mathematics specialist is a certificated teacher who has demonstrated at least the following knowledge and skills:

(a) Enhanced mathematics content knowledge and skills necessary to provide students in grades kindergarten through eight a deep understanding of the essential academic learning requirements and performance expectations in mathematics;

(b) Knowledge and skills in a variety of instructional strategies for teaching mathematics content; and

(c) Knowledge and skills in instructional strategies targeted for students struggling with mathematics.

(2) The legislature encourages the professional educator standards board to develop standards for and adopt a specialty endorsement for elementary mathematics specialists as defined under this section.

(3) School districts may work with local colleges and universities, educator preparation programs, and educational service districts to develop and offer training and professional development opportunities in the knowledge and skills necessary for a teacher to be considered an elementary mathematics specialist under this section.

(4) School districts are encouraged to use elementary mathematics specialists for direct instruction of students using an itinerant teacher model where the specialist rotates from classroom to classroom within the school.

Passed by the House February 26, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 210

[Engrossed House Bill 1730]

BONDS—ISSUANCE—LOCAL GOVERNMENTS

AN ACT Relating to the authorization of bonds issued by Washington local governments; amending RCW 39.46.040, 35.33.131, 35.34.220, 35A.33.130, and 35A.34.220; and creating a new section.

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

Sec. 1. RCW 39.46.040 and 1983 c 167 s 4 are each amended to read as follows:

(1) A local government authorized to issue bonds (~~shall~~) must determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030.

(2) If an ordinance or resolution approving the issuance of bonds authorizes an officer or employee of the local government to serve as its designated representative and to accept, on behalf of the local government, an offer to purchase those bonds, the acceptance of the offer by the designated

representative must be consistent with terms established by the ordinance or resolution, and with additional parameters set by the governing body of the local government in the ordinance or resolution. That ordinance or resolution must establish the following terms for the bonds or set forth parameters with respect thereto: The amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes), and any other terms and conditions deemed appropriate by the legislative body of the local government. A county designating a representative in accordance with this subsection must act in a manner that is consistent with the approved county debt policy adopted in accordance with RCW 36.48.070.

Sec. 2. RCW 35.33.131 and 1969 ex.s. c 95 s 19 are each amended to read as follows:

Moneys received from the sale of bonds or warrants (~~(shall)~~ must be used for no other purpose than that for which they were issued (~~and no expenditure shall be made for that purpose until the bonds have been duly authorized~~)). If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it (~~(shall)~~ must be used for the (~~redemption of such bond or warrant indebtedness~~) payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, (~~no such expenditure shall~~) expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred (until after the bonds have been duly authorized) consistent with any applicable federal tax law requirements.

Sec. 3. RCW 35.34.220 and 1985 c 175 s 25 are each amended to read as follows:

Moneys received from the sale of bonds or warrants (~~(shall)~~ must be used for no other purpose than that for which they were issued (~~and no expenditure shall be made for that purpose until the bonds have been duly authorized~~)). If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it (~~(shall)~~ must be used for the (~~redemption of such bond or warrant indebtedness~~) payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, (~~no such expenditure shall~~) expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred (until after the bonds have been duly authorized) consistent with any applicable federal tax law requirements.

Sec. 4. RCW 35A.33.130 and 1967 ex.s. c 119 s 35A.33.130 are each amended to read as follows:

Moneys received from the sale of bonds or warrants (~~(shall)~~ must be used for no other purpose than that for which they were issued (~~and no expenditure shall be made for that purpose until the bonds have been duly authorized~~)). If any unexpended fund balance remains from the proceeds realized from the

bonds or warrants after the accomplishment of the purpose for which they were issued it ~~((shall))~~ must be used for the ~~((redemption of such bond or warrant indebtedness))~~ payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, ~~((no such expenditure shall))~~ expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred ~~((until after the bonds have been duly authorized))~~ consistent with any applicable federal tax law requirements.

Sec. 5. RCW 35A.34.220 and 1985 c 175 s 54 are each amended to read as follows:

Moneys received from the sale of bonds or warrants ~~((shall))~~ must be used for no other purpose than that for which they were issued ~~((and no expenditure shall be made for that purpose until the bonds have been duly authorized))~~. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it ~~((shall))~~ must be used for the ~~((redemption of such bond or warrant indebtedness))~~ payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, ~~((no such expenditure shall))~~ expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred ~~((until after the bonds have been duly authorized))~~ consistent with any applicable federal tax law requirements.

NEW SECTION. Sec. 6. All bonds previously issued and any reimbursements previously made with bond proceeds by any local government and consistent with the provisions of this act are hereby validated, ratified, and confirmed.

Passed by the House March 1, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 211

[Substitute House Bill 1761]

ISSUANCE OF BONDS—OUT-OF-STATE ISSUERS

AN ACT Relating to limiting private activity bond issues by out-of-state issuers; amending RCW 39.46.020 and 39.86.140; and adding a new section to chapter 39.46 RCW.

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

Sec. 1. RCW 39.46.020 and 2001 c 299 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) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of

money, with or without interest, at a designated time or times to either registered owners or bearers, including debt issued under chapter 39.50 RCW.

(2) "Host approval" means an approval of an issue of bonds by an applicable elected representative of the state or local government, having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the internal revenue code, over the area in which a facility is located that is to be financed with bonds issued by an issuer that is not the state or a local government.

(3) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi municipal corporation, including any public corporation created by such an entity.

~~((3))~~ (4) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

~~((4))~~ (5) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

~~((5))~~ (6) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation.

NEW SECTION. Sec. 2. A new section is added to chapter 39.46 RCW to read as follows:

(1) It is the policy of this state that in order to maintain an effective system of monitoring the use of federal subsidies within the state, facilities within the state proposed to be financed with bonds issued by an issuer formed or organized under the laws of another state must receive prior approval from the statewide issuer authorized by the laws of Washington to issue bonds for the proposed project in accordance with this section.

(2)(a) At least one hundred twenty days prior to the public hearing for the proposed issuance of bonds for a project located in this state by an issuer formed or organized under the laws of another state, the issuer must notify the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project and provide the information required under (b) of this subsection.

(b) The following items and information must be received by the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project:

(i) A copy of the proposed notice of public hearing pertaining to the facilities, providing the date and location of the proposed hearing;

(ii) The maximum stated principal amount of the bonds;

(iii) A description of the facility, including its location;

(iv) A description of the plan of finance;

(v) The name of the issuer of the bonds;

(vi) The name of the initial owner or principal user of the facility;

(vii) A description of how the project will meet the public policy requirements and objectives of this state including the policies of the statewide issuer under Washington law; and

(viii) A check in the amount established by the statewide issuer under Washington law to perform the review.

(c) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are consistent with the laws and public policy of the state and are in the best interest of the state, then the statewide issuer shall issue a

written approval under this section authorizing the governmental unit to grant its host approval of the public hearing in its discretion.

(d) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are not consistent with the laws and public policy of the state and are not in the best interest of the state, then the public hearing may not proceed and the bonds may not be issued by an issuer formed or organized under the laws of another state.

(3)(a) By December 1, 2011, annually each December 1st until December 1, 2014, and December 1st every five years thereafter, each statewide issuer receiving the notice required by subsection (2) of this section from an issuer formed or organized under the laws of another state shall, within existing funds, submit a report to the appropriate committees of the legislature.

(b) Each report under (a) of this subsection must provide, for annual reports the following information from the previous fiscal year, and for other reports the following information from each of the previous fiscal years:

(i) The number of proposed projects for which the statewide issuer received notice and the information described under subsection (2) of this section;

(ii) A description of the projects for which notice was submitted;

(iii) The dollar amount of each proposed project;

(iv) The location of each proposed project;

(v) Whether the proposed project was approved by the statewide issuer; and

(vi) For any project that was not approved by the statewide issuer, the reasons for the statewide issuer's decision.

Sec. 3. RCW 39.86.140 and 2010 1st sp.s. c 6 s 8 are each amended to read as follows:

(1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency. The agency may not make an allocation of the state ceiling to an issuer formed or organized under the laws of another state.

(2) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

(a) The amount of the allocation sought;

(b) The bond use category from which the allocation sought would be made;

(c) The project or program for which the allocation is requested;

(d) The financing schedule for which the allocation is needed; and

(e) Any other such information required by the agency, including information which corresponds to the allocation criteria of RCW 39.86.130.

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

(a) February 1st of the calendar year for which the request is made;

(b) Fifteen days from the date the agency receives an allocation request; or

(c) Fifteen days from the date the agency receives a recommendation by the board with regard to a small issue allocation request, should the board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

(i) Except for housing and student loans, any allocations granted prior to April 1st, for which bonds have not been issued by July 1st of the same calendar year, shall revert to the agency on July 1st of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1st, for which bonds have not been issued by October 15th of the same calendar year, shall revert to the agency on October 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15th of the same calendar year, shall revert to the agency on December 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of bonds issued under the authority of a state ceiling for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in RCW 39.86.130. If the amount of bonds actually issued under the authority of a state ceiling is greater than the amount allocated, the entire allocation shall be disallowed.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 212

[Substitute House Bill 1783]

FLOATING HOMES

AN ACT Relating to houseboats and houseboat moorages; amending RCW 90.58.270; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that existing floating homes, as part of our state's existing houseboat communities, are an important cultural amenity and element of our maritime history. These surviving floating home communities are a linkage to the past, when our waterways were the focus of commerce, transport, and development. In order to ensure the vitality and long-term survival of these existing floating home communities, consistent with the legislature's goal of allowing their continued use, improvement, and replacement without undue burden, the legislature finds that it is necessary to clarify their legal status.

Sec. 2. RCW 90.58.270 and 1971 ex.s. c 286 s 27 are each amended to read as follows:

(1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

(5)(a) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.

(b) For the purposes of this subsection:

(i) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(ii) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

Passed by the House April 14, 2011.
Passed by the Senate April 7, 2011.
Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 213

[House Bill 1867]

GIFT CERTIFICATES AND CARDS—PREPAID WIRELESS SERVICES

AN ACT Relating to clarifying that prepaid wireless services are not intended to be considered as gift cards or gift certificates; and amending RCW 19.240.010.

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

Sec. 1. RCW 19.240.010 and 2004 c 168 s 2 are each amended to read as follows:

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

(1) "Artistic and cultural organization" has the same meaning as in RCW 82.04.4328.

(2) "Charitable organization" means an organization exempt from tax under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)).

(3) "Fund-raising activity" has the same meaning as in RCW 82.04.3651.

(4)(a) "Gift card" means a record as described in subsection (5) of this section in the form of a card, or a stored value card or other physical medium, containing stored value primarily intended to be exchanged for consumer goods and services.

(b) "Gift card" does not include prepaid telephone calling cards or prepaid commercial mobile radio services as defined in 47 C.F.R. 20.3.

(5)(a) "Gift certificate" means an instrument evidencing a promise by the seller or issuer of the record that consumer goods or services will be provided to the bearer of the record to the value or credit shown in the record and includes gift cards.

(b) "Gift certificate" does not include prepaid telephone calling cards or prepaid commercial mobile radio services as defined in 47 C.F.R. 20.3.

(6) "Bearer" means a person with a right to receive consumer goods and services under the terms of a gift certificate, without regard to any fee, expiration date, or dormancy or inactivity charge.

(7) "Issue" means to sell or otherwise provide a gift certificate to any person, and includes reloading or adding value to an existing gift certificate.

(8) "Stored value" has the same meaning as the term "closed loop stored value device" defined in RCW 19.230.010.

Passed by the House March 1, 2011.
Passed by the Senate April 12, 2011.
Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 214

[Second Substitute Senate Bill 5034]

PRIVATE INFRASTRUCTURE DEVELOPMENT

AN ACT Relating to private infrastructure development; amending RCW 80.04.010, 80.04.110, 80.04.160, 80.04.250, 80.04.500, 80.28.010, 80.28.020, 80.28.030, 80.28.040, 80.28.050, 80.28.060, 80.28.080, 80.28.090, 80.28.100, 80.28.110, 80.28.120, 80.28.130, 80.28.185, 80.28.240, 80.28.270, 80.28.275, 7.60.025, and 36.94.110; adding new sections to chapter 80.28 RCW; adding a new section to chapter 80.04 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature recognizes the critical importance of infrastructure to the development of industrial, commercial, and residential properties and finds that infill development is often limited by the lack of infrastructure. The legislature further finds that in many areas, public funding to extend infrastructure is not available. It is the purpose of this act to allow private utilities to provide infrastructure needed for economic development in a manner that minimizes development sprawl.

Sec. 2. RCW 80.04.010 and 1995 c 243 s 2 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

(1) "Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

(2) "Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

(3) "Commission" means the utilities and transportation commission.

(4) "Commissioner" means one of the members of such commission.

(5) "Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

(6) "Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

(7) "Corporation" includes a corporation, company, association or joint stock association.

(8) "Person" includes an individual, a firm or partnership.

(9) "Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

(10) "Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

(11) "Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light,

heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

(12) "Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

(13) "LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

(14) "Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

(15) "Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

(16) "Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

(17) "Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

(18) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

(19) "Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

(20) "Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances,

instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

(21) "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

(22) "Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

(23)(a) "Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state(~~(= PROVIDED, That)~~).

(b) For purposes of commission jurisdiction (~~(it shall)~~), "water company" does not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce(~~(= AND PROVIDED FURTHER, That such)~~). The measurement of customers or revenues (~~(shall)~~) must include all portions of water companies having common ownership or control, regardless of location or corporate designation.

(c) "Control" (~~(as used herein shall be)~~) is defined by the commission by rule and (~~(shall)~~) does not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company.

(d) "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. (~~(However,)~~)

(e) Water companies exempt from commission regulation (~~(shall be)~~) are subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

(24) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

(25) "Public service company" includes every gas company, electrical company, telecommunications company, wastewater company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

(26) "Local exchange company" means a telecommunications company providing local exchange telecommunications service.

(27) "Department" means the department of health.

~~((The term))~~ (28) "Service" is used in this title in its broadest and most inclusive sense.

(29)(a) "Wastewater company" means a corporation, company, association, joint stock association, partnership and person, their lessees, trustees, or receivers that owns or proposes to develop and own a system of sewerage that is designed for a peak flow of twenty-seven thousand to one hundred thousand gallons per day if treatment is by a large on-site sewerage system, or to serve one hundred or more customers.

(b) For purposes of commission jurisdiction, wastewater company does not include: (i) Municipal, county, or other publicly owned systems of sewerage; or (ii) wastewater company service to customers outside of an urban growth area as defined in RCW 36.70A.030.

(30) "System of sewerage" means collection, treatment, and disposal facilities and services for sewerage, or storm or surface water run-off.

NEW SECTION. Sec. 3. A new section is added to chapter 80.28 RCW to read as follows:

(1) A wastewater company may not own or develop a system of sewerage for the purpose of providing service for compensation without first having obtained from the commission a certificate declaring that the public convenience and necessity requires such service.

(2) Issuance of the certificate of public convenience and necessity must be determined on, but not limited to, the following factors:

(a) A comprehensive business plan detailing the design, construction, operation, and maintenance of the proposed service system;

(b) Demonstration of sufficient financial resources to properly operate and maintain the proposed system, and to replace and upgrade capital assets;

(c) The need to develop a new stand alone system instead of connecting to an existing system;

(d) A statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration;

(e) A certification from the municipal corporation that it is not willing and able to provide the sewerage services being proposed; and

(f) A certification from the municipal corporation that the company's proposed service is consistent with the locally approved general sewer plan.

(3) The commission may, after providing notice and an opportunity for public comment, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

(4) No certificate may be transferred to any private or nonprofit entity unless authorized by the commission.

(5)(a) Prior to the commission approving a wastewater company to provide new service or extend existing service, the wastewater company must file and continuously maintain in effect, a bond, or equivalent surety as determined by the commission, with the commission to ensure that there are sufficient funds to:

- (i) Design, construct, operate, and maintain the proposed system;
- (ii) Replace and upgrade capital assets as required by federal or state law or by order of the department of health or department of ecology; and
- (iii) Allow additional connections to the system, if approved by the department of health or the department of ecology.

(b) The bond, or its equivalent surety, is payable under this section to the commission upon:

- (i) An order under section 5 of this act to transfer a system or systems of sewerage to a capable wastewater company;
- (ii) Notice that the wastewater company does not intend to renew the bond or its equivalent surety or has failed to renew the bond or its equivalent surety; or
- (iii) A petition by the commission under section 6, 13, or 14 of this act to place a wastewater company in receivership.

(c) The commission must hold the payment in trust until an acquiring wastewater company is designated under section 5 of this act or a receiving entity is designated under section 6, 13, or 14 of this act, at which point the funds will be made available to the company or entity to expend as directed by the commission.

(6) For purposes of issuing certificates under this chapter, the commission may adopt rules to implement this section.

(7) A wastewater company must obtain commission approval before expanding an existing system beyond the approved capacity set forth in its certificate or acquiring new systems, either by construction or purchase.

NEW SECTION. Sec. 4. A new section is added to chapter 80.04 RCW to read as follows:

(1) Every wastewater company subject to regulation by the commission must, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, pay to the commission a regulatory fee.

(2) The commission must assess such regulatory fees in amounts sufficient for the commission to recover the commission's actual and reasonable costs of supervising and regulating wastewater companies.

(3) Any payment of a fee assessed under this section made after the due date must include a late fee of two percent of the amount due.

(4) Delinquent fees accrue interest at the rate of one percent per month.

(5) The provisions of RCW 80.04.030, 80.04.040, and 80.04.050 apply to regulatory fees for wastewater companies.

(6) The commission is authorized and empowered to adopt and issue rules and regulations to implement this section, including establishing the methodologies and procedures for developing, assessing, and collecting fees under this section.

NEW SECTION. Sec. 5. A new section is added to chapter 80.28 RCW to read as follows:

(1) If the commission determines, after providing notice and opportunity for a hearing in the manner required for complaints under RCW 80.04.110, that a

wastewater company is unfit to provide wastewater service on any system of sewerage, under its ownership, the commission may order the transfer of any such system or systems to a capable wastewater company.

(2) In determining whether a wastewater company is unfit to provide wastewater service on a system of sewerage in consultation with the department of health or the department of ecology as appropriate to the agencies' jurisdiction, the commission may consider the company's technical and managerial expertise to operate the system of sewerage, the company's financial soundness and the company's willingness and ability to make ongoing investments necessary to maintain compliance with statutory and regulatory standards for the safety, adequacy, efficiency, and reasonableness of the service provided.

(3) Before ordering the transfer of a system of sewerage owned by a wastewater company that is unfit to provide service, the commission must first determine that:

(a) Alternatives to the transfer are impractical or not economically feasible;

(b) The acquiring wastewater company is willing and able to acquire the system or systems of sewerage, financially sound, and has the technical and managerial expertise to own and operate the system or systems of sewerage in compliance with applicable statutory and regulatory standards; and

(c) Rates paid by existing customers served by the acquiring wastewater company will not increase unreasonably because of the acquisition of the system of sewerage or because of expenditures that may be necessary to assure compliance with applicable statutory and regulatory standards for the safety, adequacy, efficiency, and reasonableness of the service provided.

(4) The sale price for the unfit wastewater company's system or systems of sewerage assets must be determined by agreement between the unfit wastewater company and the acquiring capable wastewater company subject to a finding by the commission that the agreed price is reasonable. A price is deemed reasonable if it does not exceed the original cost of plant in service, minus accumulated depreciation, minus contributions in aid to construction. If the unfit wastewater company and the acquiring capable wastewater company are unable to agree on the sale price or the commission finds that the agreed sale price is not reasonable, the acquiring capable wastewater company may initiate a condemnation proceeding in superior court in the manner provided by chapter 8.04 RCW to determine the compensation to be paid by the acquiring capable wastewater company for the failed system or systems of sewerage assets.

(5) The capable wastewater company acquiring an unfit wastewater company's system or systems shall have the same immunity from liability as wastewater companies assuming substandard systems as set forth in RCW 80.28.275.

(6) The commission must provide copies of the notice required by subsection (1) of this section to the department of health or the department of ecology, as appropriate to the agencies' jurisdiction, and all proximate public entities providing wastewater utility service.

(7) Any capable wastewater company approved by the commission to acquire the system or systems of sewerage of an unfit wastewater company must submit to the commission, for approval, a financial plan, including a timetable, for bringing the acquired system of sewerage assets into compliance with

applicable statutory and regulatory standards. The acquiring capable wastewater company must also provide a copy of the plan to the department of health or the department of ecology, as appropriate to the agencies' jurisdiction, and other state or local agency as the commission may direct. The commission must give the department of health or the department of ecology, as appropriate to the agencies' jurisdiction, adequate opportunity to comment on the plan and must consider any comments submitted in deciding whether or not to approve the plan.

(8) The legislature grants to any private entity the power of eminent domain, for exercise only under the circumstances described in this section. However, a private entity must obtain authorization from the city, town, or county with jurisdiction over the subject property after the legislative authority of the city, town, or county has passed an ordinance requiring that property be taken for public use. This subsection does not limit eminent domain authority granted by any other provision of law.

NEW SECTION. Sec. 6. A new section is added to chapter 80.28 RCW to read as follows:

(1) The commission may petition the Thurston county superior court pursuant to chapter 7.60 RCW to place a wastewater company in receivership. The petition must include the names of one or more qualified candidates for receiver who have consented to assume operation of the system of sewerage. The petition must also include a list of interested and qualified individuals, municipal corporations, and wastewater companies with experience in providing wastewater service and a history of satisfactory operation of a system of sewerage. If no other entity is willing and able to be appointed as the receiver, the court must appoint the county or other municipal corporation whose geographic boundaries include, in whole or in part, the system of sewerage at issue. The municipal corporation may designate one of its agencies or divisions to operate the system, or it may contract with another entity to operate the system. The department of health or department of ecology, whichever has jurisdiction, must provide regulatory oversight for managing the system of sewerage.

(2) In any petition for receivership under subsection (1) of this section, the commission must recommend that the court grant the receiver full authority to act in the best interests of the customers served by the system of sewerage. The receiver must assess the capability, in conjunction with the department of health or ecology, whichever has jurisdiction, and local government, for the system to operate in compliance with health and safety standards. The receiver must report to the court and the commission its recommendations for the company's future operation of the system, including the formation of a water-sewer district or other public entity, or ownership by another existing wastewater company capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate official allege an immediate and serious danger to residents constituting an emergency, the court must set the matter for hearing within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing, which must be held within fourteen days after receipt of the petition.

(4) If the court imposes a bond upon a receiver, the amount must reasonably relate to the level of operating revenue generated by, and the capital value of, the wastewater company. Any receiver appointed pursuant to this section may not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders, subject to the provisions of law governing clean water as referenced by the commission by rule.

(5) The court must authorize the receiver to impose reasonable assessments on the customers of the system of sewerage to recover expenditures for improvements necessary for the public health and safety.

(6) The commission must develop a plan for transfer of the system of sewerage to a new operator and submit its plan to the court. The commission must develop the plan after notice to, and an opportunity to participate by, the receiver, the municipal corporations whose geographic boundaries, in whole or in part, include the system of sewerage at issue, and the public. The commission must complete the plan no later than twelve months after appointment of a receiver.

(a) If the commission finds that no private entity is able or willing to take over the system of sewerage and decides the system of sewerage should be taken over by a municipal corporation whose geographic boundaries include the system of sewerage at issue, in whole or in part, the commission must provide its findings to the court and the court may issue an order to that effect. If the court orders a municipal corporation to take over the system of sewerage, the municipal corporation must promptly institute negotiations to purchase the system. If, within six months of the court's order, the negotiations fail or otherwise do not result in a purchase, the municipal corporation must promptly initiate a condemnation proceeding to acquire the system. The court must terminate the receivership once the purchase is complete.

(b) If the commission decides the system of sewerage should be taken over by a private entity, such as an individual or business, the commission must provide its findings to the court and the court may issue an order to that effect. If the court orders a private entity to take over the system of sewerage, the private entity must promptly institute negotiations to purchase the system. If, within six months of the court's order, the negotiations fail or otherwise do not result in a purchase, the private entity must promptly exercise its power of eminent domain granted by the legislature in subsection (9) of this section to acquire the system. The court must terminate the receivership once the purchase is complete.

(7) Other than pursuant to subsection (6)(a) and (b) of this section, the court may not terminate the receivership, and order the return of the system to the owners, unless the commission approves that action. The court may impose reasonable conditions upon the return of the system to the owner, including the posting of a bond or other security, routine performance and financial audits, employment of qualified operators and other staff or contracted services, compliance with financial viability requirements, or other measures sufficient to ensure the ongoing proper operation of the system.

(8) If, as part of the ultimate disposition of the system, a condemnation proceeding is commenced to acquire the system of sewerage, the court shall oversee any appraisal of the system conducted under Title 7 RCW to assure that the appraised value properly reflects any reduced value because of the necessity

to make improvements to the system. The court has the authority to approve the appraisal and to modify the appraisal based on any information provided at an evidentiary hearing. The court's determination of the proper value of the system, based on the appraisal, is final and only appealable if not supported by substantial evidence. If the appraised value is appealed, the court may order the system's ownership to be transferred upon payment of the approved appraised value.

(9) The legislature grants any municipal corporation, and any private entity the power of eminent domain under the circumstances described in this section. However, a private entity must obtain authorization from the city, town, or county with jurisdiction over the subject property after the legislative authority of the city, town, or county has passed an ordinance requiring that property be taken for public use. This subsection does not limit eminent domain authority granted by any other provision of law.

Sec. 7. RCW 80.04.110 and 1995 c 376 s 12 are each amended to read as follows:

(1)(a) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of ~~((law))~~ this title, Title 81 RCW, or of any order or rule of the commission(~~(= PROVIDED, THAT))~~).

(b) No complaint (~~(shall))~~ may be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, wastewater company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water, wastewater company services, or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service(~~(= PROVIDED, FURTHER, THAT))~~).

(c) When two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission (~~(shall have))~~ has power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as (~~(shall be))~~ is found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to

prevent oppression or monopoly or to encourage competition, and upon any such hearing it (~~shall be~~) is proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion (~~shall~~) may be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided(~~(= PROVIDED;)~~). However, all grievances to be inquired into (~~shall~~) must be plainly set forth in the complaint. No complaint (~~shall~~) may be dismissed because of the absence of direct damage to the complainant.

(3) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which (~~shall~~) must be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing (~~shall~~) may not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4)(a) The commission (~~shall~~) may, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapters 70.116 and 70.119A RCW, and the results of the audit (~~shall~~) must be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

(b) Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons

has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company (~~shall~~) may not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test.

Sec. 8. RCW 80.04.160 and 1961 c 14 s 80.04.160 are each amended to read as follows:

The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity, wastewater company services, and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations (~~shall~~) must be promulgated and issued by the commission on its own motion, and (~~shall~~) must be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission (~~shall have~~) has, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings(~~(= PROVIDED,)~~). However, no person desiring to be present at such hearing (~~shall~~) may be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission.

Sec. 9. RCW 80.04.250 and 1991 c 122 s 2 are each amended to read as follows:

(1) The commission (~~shall have~~) has power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it (~~shall~~) deems such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas,

wastewater company services, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

(2) The commission (~~shall have~~) has the power to make revaluations of the property of any public service company from time to time.

(3) The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice (~~shall~~) must be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

Sec. 10. RCW 80.04.500 and 1985 c 450 s 13 are each amended to read as follows:

Nothing in this title (~~shall~~) authorizes the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any telecommunications line, gas plant, electrical plant, system of sewerage, or water system owned and operated by any city or town, or to make or enforce any order relating to the safety of any telecommunications line, electrical plant, system of sewerage, or water system owned and operated by any city or town, but all other provisions enumerated herein (~~shall~~) apply to public utilities owned by any city or town.

Sec. 11. RCW 80.28.010 and 2008 c 299 s 35 are each amended to read as follows:

(1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 (~~shall~~) must be deemed as prudent and necessary for the operation of a utility.

(2) Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company, wastewater company, or water company, affecting or pertaining to the sale or distribution of its product or service, (~~shall~~) must be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is

terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of ~~((community, trade, and economic development))~~ commerce, which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15th and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer ~~((shall))~~ is not ~~((be))~~ eligible for protections under this chapter until the past due bill is paid. The plan ~~((shall))~~ may not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company, wastewater company, and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product, or provision of its services, as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, (~~shall~~) does not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

Sec. 12. RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended to read as follows:

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company, wastewater company, or water company, for gas, electricity, wastewater company services, or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

Sec. 13. RCW 80.28.030 and 1989 c 207 s 4 are each amended to read as follows:

(1) Whenever the commission (~~shall~~) finds, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, the quality of wastewater company services, or the purity, quality, volume, and pressure of water, supplied by any gas company, electrical company, wastewater company, or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, in the operation of the services and facilities of wastewater companies, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company, wastewater company, or water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted

under chapter 70.116 RCW for purity, volume, and pressure (~~shall be~~) is prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient. Failure of a wastewater company to comply with standards and permit conditions adopted and implemented under chapter 70.118B or 90.48 RCW for treatment and disposal of sewerage, is prima facie evidence that the system of sewerage is insufficient, inadequate, or inefficient.

(2) In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department of health. In the event that a water company fails to comply with an order of the commission (~~in a timely fashion~~) within the deadline specified in the order, the commission may request that the department petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

(3) In ordering improvements to the system of sewerage, the commission shall consult and coordinate with the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. In the event that a wastewater company fails to comply with an order of the commission within the deadline specified in the order, the commission may petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

Sec. 14. RCW 80.28.040 and 1989 c 207 s 5 are each amended to read as follows:

(1) Whenever the commission (~~shall~~) finds, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company, wastewater company, or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.

(2) In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department of health. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

(3) In ordering improvements to the service of any system of sewerage, the commission shall consult and coordinate with the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. In the event that a wastewater company fails to comply with an order of the commission within the deadline specified in the order, the commission may petition the superior court of Thurston county to place the company in receivership pursuant to chapter 7.60 RCW.

Sec. 15. RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended to read as follows:

Every gas company, electrical company, wastewater company, and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all

rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company, wastewater company, or water company.

Sec. 16. RCW 80.28.060 and 2008 c 181 s 402 are each amended to read as follows:

(1) Unless the commission otherwise orders, no change ~~((shall))~~ may be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company, wastewater company, or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice ~~((shall))~~ must plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes ~~((shall))~~ must be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it ~~((shall))~~ must take effect. All such changes ~~((shall))~~ must be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention ~~((shall))~~ must be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission.

(2) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population.

Sec. 17. RCW 80.28.080 and 1985 c 427 s 2 are each amended to read as follows:

(1)(a) Except as provided otherwise in this subsection, no gas company, electrical company, wastewater company, or water company ~~((shall))~~ may charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor ~~((shall))~~ may any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary

work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes(~~(= PROVIDED, That the term))~~).

For the purposes of this subsection (1):

(i) "Employees" (~~(as used in this paragraph shall)~~) includes furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and (~~(the term)~~)

(ii) "Families(=)" (~~(as used in this paragraph, shall)~~) includes the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this (~~(paragraph: PROVIDED FURTHER, That)~~) subsection (1).

(b) Water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested(~~(= AND PROVIDED FURTHER, That))~~).

(c) Gas companies, electrical companies, wastewater companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

(2) No gas company, electrical company, wastewater company, or water company (~~(shall)~~) may extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Sec. 18. RCW 80.28.090 and 1961 c 14 s 80.28.090 are each amended to read as follows:

No gas company, electrical company, wastewater company, or water company (~~(shall)~~) may make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 19. RCW 80.28.100 and 1961 c 14 s 80.28.100 are each amended to read as follows:

No gas company, electrical company, wastewater company, or water company (~~(shall)~~) may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Sec. 20. RCW 80.28.110 and 1990 c 132 s 5 are each amended to read as follows:

Every gas company, electrical company, wastewater company, or water company, engaged in the sale and distribution of gas, electricity or water or the provision of wastewater company services, shall, upon reasonable notice,

furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity, wastewater company services, and water as demanded, except that a water company (~~shall~~) may not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW and wastewater companies may not provide services contrary to the approved general sewer plan.

Sec. 21. RCW 80.28.120 and 1961 c 14 s 80.28.120 are each amended to read as follows:

Every gas, water, wastewater, or electrical company owning, operating or managing a plant or system for the distribution and sale of gas, water or electricity, or the provision of wastewater company services to the public for hire (~~shall be~~) is, and (~~be~~) is held to be a public service company as to such plant or system and as to all gas, water, wastewater company services, or electricity distributed or furnished therefrom, whether such gas, water, wastewater company services, or electricity be sold wholesale or retail or be distributed wholly to the general public or in part as surplus gas, water, wastewater company services, or electricity to manufacturing or industrial concerns or to other public service companies or municipalities for redistribution. Nothing in this title (~~shall~~) may be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the use of its lines, equipment or service under any contract or contracts in force on June 7, 1911, at the rates fixed in such contract or contracts (~~PROVIDED, That~~). However, the commission (~~shall have~~) has power, in its discretion, to direct by order that such contract or contracts (~~shall~~) be terminated by the company party thereto and thereupon such contract or contracts (~~shall~~) must be terminated by such company as and when directed by such order.

Sec. 22. RCW 80.28.130 and 1961 c 14 s 80.28.130 are each amended to read as follows:

Whenever the commission (~~shall~~) finds, after hearing had upon its own motion or upon complaint, that repairs or improvements, to, or changes in, any gas plant, electrical plant, system of sewerage, or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity, wastewater company services, or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions or extensions of such gas plant, electrical plant, system of sewerage, or water system be made.

Sec. 23. RCW 80.28.185 and 1989 c 207 s 6 are each amended to read as follows:

The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies or wastewater companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county.

Sec. 24. RCW 80.28.240 and 1989 c 11 s 30 are each amended to read as follows:

(1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

(3) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

(4) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, wastewater company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, system of sewerage, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, wastewater company services, or any other service or commodity furnished by the utility for compensation.

Sec. 25. RCW 80.28.270 and 1991 c 101 s 2 are each amended to read as follows:

The commission's jurisdiction over the rates, charges, practices, acts or services of any water company ~~((shall))~~ or wastewater company includes any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden ~~((shall be))~~ is on the company to prove that its proposed charges are fair, just, reasonable, and sufficient.

Sec. 26. RCW 80.28.275 and 1994 c 292 s 9 are each amended to read as follows:

A water company or a wastewater company assuming responsibility for a water system or system of sewerage that is not in compliance with state or federal requirements ~~((for public drinking water systems))~~, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements ~~((for public drinking water systems))~~, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the water company or wastewater company has submitted and is complying with a plan and schedule of improvements approved by the department of health or the department of ecology, as appropriate to the agencies' jurisdiction. This immunity ~~((shall))~~ expires on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith and is subject to the provisions of law governing clean water as referenced by the commission by rule.

Sec. 27. RCW 7.60.025 and 2010 c 212 s 4 are each amended to read as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, during the pendency of any action to foreclose upon any lien against or for forfeiture of any interest in real or personal property, or after notice of a trustee's sale has been given under RCW 61.24.040, or after notice of forfeiture has been given under RCW 61.30.040, on application of any person, when the interest in the property that is the subject of foreclosure or forfeiture of

the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action, the notice of trustee's sale or notice of forfeiture is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW;

(ff) Under RCW 64.34.364(10), in an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver (~~shall~~) must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for

the receiver's appointment also (~~shall~~) must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases (~~shall~~) must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

Sec. 28. RCW 36.94.110 and 1967 c 72 s 11 are each amended to read as follows:

After adoption of the sewerage and/or water general plan, all municipal corporations and private utilities within the plan area shall abide by and adhere to the plan for the future development of their systems. A municipal corporation or private utility, including a wastewater company as defined in RCW 80.04.010, may petition for amendments to the plan. Whenever the governing authority of any county or counties or any municipal corporation deems it to be for the public interest to amend the sewerage and/or water general plan for such county or counties, notice (~~shall~~) must be filed with the board or boards of county commissioners. Upon such notice, the board or boards shall initiate consideration of any amendment requested relating to the plan and proceed as provided in this chapter for the adoption of an original plan.

NEW SECTION. **Sec. 29.** (1) The commission may adopt rules to implement this act before July 1, 2012, to ensure that this act is implemented on its effective date.

(2)(a) The commission may collect payments from wastewater companies and other private entities that have notified the commission of their willingness to cover the costs of the rule making. The commission must issue a notice of intent to adopt rules that includes a request that wastewater companies or other private entities notify the commission of their intent to participate in the cost recovery mechanism.

(b) Upon receipt of the statements of intent to participate in the cost recovery mechanism, the commission must proportionately divide among the companies or private entities the anticipated cost of the rule making and send the parties an invoice.

(c) Upon receipt of sufficient funds to pay for the rule making, the commission must commence the rule-making process.

(3) The commission is not required to engage in rule making until it has collected sufficient payments to cover the projected costs of the rule making.

(4) The commission must provide a refund for any overpayment of the costs at the conclusion of the rule making.

(5) Between the conclusion of the rule making and June 30, 2013, the commission may collect from applicants for a certificate of public convenience and necessity a portion of the costs of rule making and provide proportionate refunds to the parties that had previously paid for the costs of rule making.

NEW SECTION. Sec. 30. Nothing in this act supersedes federal, state, or local government requirements to obtain a wastewater discharge permit or a large on-site sewerage system operating permit or other permits or licenses required by law in the state of Washington.

NEW SECTION. Sec. 31. 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. 32. Except for section 29 of this act, this act takes effect July 1, 2012.

Passed by the Senate April 14, 2011.

Passed by the House April 5, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 215

[Engrossed Substitute House Bill 1406]

INTRASTATE BUILDING SAFETY MUTUAL AID SYSTEM

AN ACT Relating to intrastate building safety mutual aid in the event of emergencies and other situations that temporarily render a jurisdiction incapable of providing required building safety services; and adding a new chapter to Title 24 RCW.

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

NEW SECTION. Sec. 1. (1) The intrastate building safety mutual aid system is established to provide for mutual assistance among member jurisdictions in the case of a building safety emergency or to participate in training and exercises.

(2) Unless otherwise provided in subsection (3) of this section, the following governmental entities are member jurisdictions of the intrastate building safety mutual aid system:

(a) Counties;

(b) Cities and towns;

(c) Tribal governmental entities that declare an intention, in writing, to participate as a member jurisdiction in the intrastate building safety mutual aid system; and

(d) Other governmental entities with responsibilities of ensuring building safety.

(3) Nothing in this section precludes a governmental entity participating in the intrastate building safety mutual aid system from entering into other mutual aid agreements otherwise permitted by law.

(4) Mutual assistance may include immediate responses to a building safety emergency, effort to mitigate or prevent further damages, or recovery activities.

(5) Nothing in this section is intended to interfere with other mutual aid systems established by law. Existing mutual aid systems including fire and law

enforcement mobilization systems established by RCW 43.43.960 through 43.43.975 are unaffected by this chapter.

NEW SECTION. Sec. 2. A member jurisdiction may request assistance from other member jurisdictions to respond to, mitigate, or recover from a building safety emergency, or for participation of other member jurisdictions in authorized drills or exercises, subject to the following provisions:

(1) A member jurisdiction requesting assistance under the intrastate building safety mutual aid system must (a) be experiencing a building safety emergency as defined in section 9 of this act or (b) anticipate undertaking drills or exercises.

(2) The chief executive officer of a requesting member jurisdiction, or his or her authorized designee, must request assistance under the intrastate building safety mutual aid system directly from the chief executive officer of another member jurisdiction.

(3) A verbal request for assistance must be confirmed by a written request as soon as practicable.

(4) A responding member jurisdiction may withhold requested resources for any reason.

(5) Emergency responders from a responding member jurisdiction are under the general command of the responding member jurisdiction and the operational control of the requesting member jurisdiction. All emergency intrastate building safety mutual aid system responders shall work within the infrastructure of any established incident command system as defined in RCW 38.52.010.

(6) Resources from a responding member jurisdiction are under the command of the responding member jurisdiction and the operational control of the requesting member jurisdiction.

(7) Response under this agreement is voluntary. Unless otherwise provided by this section, a requesting member jurisdiction shall reimburse responding member jurisdictions for the true and full value of assistance provided pursuant to the intrastate building safety mutual aid system. Requests for reimbursement must be made within thirty days in accordance with procedures and rates developed by the intrastate building safety mutual aid oversight committee.

(8) If not otherwise prohibited, a responding member jurisdiction may donate requested emergency responder assistance and resources to a requesting member jurisdiction.

NEW SECTION. Sec. 3. An emergency responder holding a license, certificate, or other permit issued by a responding member jurisdiction evidencing qualification in a professional, mechanical, or other skill shall be deemed to be licensed, certified, or permitted in the requesting member jurisdiction, subject to any limitations and conditions the chief executive of the requesting member jurisdiction may prescribe.

NEW SECTION. Sec. 4. An employee of a responding member jurisdiction that dies or sustains an injury in the course of his or her employment, while providing assistance under the intrastate building safety mutual aid system, is eligible to receive the benefits that would otherwise be available for injuries sustained or death in the course of employment.

NEW SECTION. Sec. 5. (1) A responding member jurisdiction may designate, in writing, persons to serve as temporary emergency responders for

the purposes of deploying such persons under the intrastate building safety mutual aid system. A designation as a temporary emergency responder does not grant any right to wages, salary, pensions, health benefits, seniority or other benefits.

(2) The intrastate building safety mutual aid oversight committee will develop guidelines and procedures detailing this temporary designation process.

NEW SECTION. Sec. 6. (1) A member jurisdiction that has a disagreement with another member jurisdiction regarding reimbursement for assistance under the provisions of this chapter may send a written request to the other member jurisdiction to resolve the matter within thirty days.

(2) If the dispute is not resolved within thirty days of the receipt of the written request, either party may request arbitration.

NEW SECTION. Sec. 7. (1) For purposes of tort liability or immunity, an emergency responder of a responding member jurisdiction is considered an agent of the requesting member jurisdiction.

(2) A responding member jurisdiction rendering aid under this system is not liable for the acts or omissions in good faith of the responding member jurisdiction's emergency responders or resources.

(3) For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness.

NEW SECTION. Sec. 8. The intrastate building safety mutual aid system does not provide rights or privileges to any person responding for any reason if a member jurisdiction has not requested or authorized that person to respond to the building safety emergency.

NEW SECTION. Sec. 9. Unless the context clearly indicates otherwise, the definitions in this section apply throughout the chapter.

(1) "Building safety emergency" means a situation that temporarily renders a building safety department incapable of providing building safety services and includes, but is not limited to, declared states of emergency, declared disasters, and other situations that temporarily impair the jurisdictions ability to provide building safety operations.

(2) "Chief executive officer" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate a chief executive officer for the purposes of this chapter by ordinance.

(3) "Command" means the ultimate authority over emergency responders and resources, held by the responding member jurisdiction.

(4) "Emergency responder" means a person with skills, qualifications, training, knowledge, and experience to respond in the case of a declared emergency, as defined by law, including expertise in such areas as law enforcement, firefighting, emergency medical services, medicine, nursing, public health, emergency management, public works, building safety specialized equipment operations skills, or other skills needed to provide aid in a state of emergency.

(5) "Operational control" means the subset of command, granted by the responding member jurisdiction to the requesting member jurisdiction for the duration of the deployment of emergency responders or resources, under the intrastate building safety mutual aid system. Operational control includes the day-to-day direction and operation of emergency responders or resources while deployed under the intrastate building safety mutual aid system, but does not include discipline, promotion, hiring, and firing of emergency responders, nor ownership nor disposition of resources.

(6) "Requesting member jurisdiction" means a member jurisdiction that requests assistance from another member jurisdiction under the process established by the intrastate building safety mutual aid system.

(7) "Resources" includes supplies, materials, equipment, facilities, energy, services, information, or systems used to prevent, mitigate, respond to, or recover from any incident resulting in a deployment under this chapter.

(8) "Responding member jurisdiction" means a member jurisdiction that has or intends to provide emergency responders and/or resources to a requesting member jurisdiction under the process established by the intrastate building safety mutual aid system.

****NEW SECTION. Sec. 10. The intrastate building safety mutual aid oversight committee is created. It shall be a committee of the Washington association of building officials. The committee will be representative of building safety agencies and disciplines as well as local political subdivisions.***

(1) The president of the Washington association of building officials will appoint members of the committee from interested applicants.

(2) The chair of the Washington association of building officials emergency management committee or designee will chair the committee.

(3) The committee will hold, at a minimum, annual meetings.

(4) The committee will be responsible for developing and updating comprehensive guidelines and procedures implementing the intrastate building safety mutual aid system. The guidelines and procedures shall include, at a minimum, the following: Projected or anticipated costs, checklists for requesting and providing assistance, recordkeeping for all member jurisdictions, rates and reimbursement procedures, and other necessary implementation instructions and forms.

(5) The committee will review the progress and status of the intrastate building safety mutual aid system and draft necessary guidelines, policies, and procedures to correct any deficiencies in the system.

****Sec. 10 was vetoed. See message at end of chapter.***

NEW SECTION. Sec. 11. 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. 12. Sections 1 through 10 of this act constitute a new chapter in Title 24 RCW.

Passed by the House February 26, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Section 10, Engrossed Substitute House Bill 1406 entitled:

"AN ACT Relating to intrastate building safety mutual aid in the event of emergencies and other situations that temporarily render a jurisdiction incapable of providing required building safety services."

Section 10 creates the intrastate building safety mutual aid oversight committee, and provides that it shall be a committee of the Washington association of building officials. I do not believe the creation of this oversight committee is necessary to carry out the purposes of the act. If desired, the members of the intrastate building safety mutual aid system can establish a committee structure without the need of a statutory reference.

For these reasons, I have vetoed Section 10 of Engrossed Substitute House Bill 1406.

With the exception of Section 10, Engrossed Substitute House Bill 1406 is approved."

CHAPTER 216

[Engrossed Substitute House Bill 1421]

COMMUNITY FOREST TRUSTS

AN ACT Relating to providing the authority to create a community forest trust to be managed by the department of natural resources; amending RCW 79.17.210, 43.30.385, 79.64.020, and 79.64.040; reenacting and amending RCW 79.02.010; and adding a new chapter to Title 79 RCW.

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

NEW SECTION. Sec. 1. (1) The legislature finds that since the 1980s, about seventeen percent of Washington's commercial forests have been converted to other land uses.

(2) The legislature further finds that as these forests vanish, so do the multiple benefits they provide to our communities such as local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, recreation areas, and open space.

(3) The legislature further finds that it has provided policy direction to the department of natural resources to protect working forest and natural resource lands at risk of conversion, while maintaining the department's obligation to manage the state's fiduciary trust lands and financial assets in the interest of the beneficiaries of the respective trust lands and assets.

(4) The legislature further finds that there are numerous tools available to acquire open space and recreation lands, but limited tools to protect working forest lands.

(5) The legislature further finds that currently the department of natural resources lacks a full complement of policy and management tools necessary to protect or manage working forest lands at high risk of conversion.

(6) The legislature further finds that through modest enhancements to existing department of natural resources' programs and authorities, the legislature can expand Washington's ability to protect communities' working forest lands, while simultaneously improving the revenue generating performance of fiduciary trust lands managed by the department of natural resources.

(7) The legislature further finds that there has been past and present legislative intent to ensure continued public access for recreation compatible with the purposes of the lands involved.

(8) The legislature further finds that there exists an interest by local communities, governments, and conservation organizations in cooperating in the establishment of working community forests.

NEW SECTION. Sec. 2. (1) If deemed practicable by the commissioner, the department is authorized to create and manage, consistent with the provisions of this chapter, a discrete category of natural resource lands in a nonfiduciary community forest land trust. The department is authorized to assemble, hold title to, and manage directly or through mutual agreement with other landowners land suitable for sustainable forest management, to be held in the community forest trust.

(2) All land held in the community forest trust must be held by the department and actively managed, consistent with a community working forest management plan developed under section 8 of this act, to generate financial support for the management of the community forest trust and to advance and sustain the working forest conservation objectives established in the management plan.

NEW SECTION. Sec. 3. (1) The department must identify lands for inclusion into the community forest trust, and manage the resulting community forest trust lands, in furtherance of goals that must be identified by the department prior to the creation of a community forest.

(2) In addition to any goals for a community forest identified by the department, the community forest trust program must satisfy the following minimum program management principles:

(a) Protecting in perpetuity working forest lands that are at a significant risk of conversion to another land use;

(b) Securing financial and social viability through sound management plans and objectives that are consistent with the values of the local community;

(c) Maintaining the land in a working status, through traditional forestry, management of specialized forest products harvest consistent with chapter 76.48 RCW, land leases, renewable energy opportunities, ecosystem services such as clean water protection or carbon storage, and other sources of revenue appropriate for the community forest to generate;

(d) Generating revenue at levels that are, at a minimum, capable of reimbursing the department for management costs and providing for some reinvestment into the management objectives of the community forest;

(e) Providing for ongoing, sustainable public recreational access, local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, and open space in a manner that is compatible with management plans and objectives adopted for the community forest; and

(f) Providing educational opportunities for local communities regarding the benefits that working forests provide to Washington's economy, communities, environment, and quality of life.

NEW SECTION. Sec. 4. (1)(a) Except as limited by section 7 of this act, the department is authorized to acquire by purchase, gift, donation, grant, transfer, or other means other than eminent domain fee interest or a partial

interest, including conservation easements, in lands or other real property suitable for management as part of the community forest trust and that are appropriate to further the goals of the community forest trust.

(b) The fair market value of any real property, and the associated valuable materials, of any land transferred into the community forest trust from state lands must be provided to the beneficiaries of the transferee trust or used for the furtherance of the transferee trust.

(2) The department is authorized to receive funds for purposes of establishing the community forest trust from grants, gifts, bequests, or loans, whether public or private, as well as from legislative appropriation.

(3) All acquisitions of real property for the community forest trust must be approved by the board.

NEW SECTION. Sec. 5. (1) The department shall, if it establishes a community forest trust program, develop criteria to be used for the identification and prioritization of forest land that is suitable for potential inclusion in the community forest trust due to its ability to most closely satisfy the goals of the community forest trust outlined in section 3 of this act.

(2) In prioritizing forest land for inclusion in the community forest trust, the department shall give priority consideration to lands that are:

(a) The subject of established management and revenue production objectives of potential local community partners;

(b) At greatest risk of conversion;

(c) Helping buffer commercial public or private forest lands from encroaching development;

(d) Helping to block up other community forest assets to be managed consistently with the community forest trust acquisition;

(e) Able to be managed, considering surrounding current or expected future land use, as economically sustainable working forest land either alone or in combination with adjacent and nearby working forest land, including other lands incorporated into a community forest by the department, a local governmental entity, or a not-for-profit conservation organization managing forest lands;

(f) Eligible for trust land transfer capital appropriations;

(g) Available for acquisition through existing or new programs or funding;

(h) Supporting existing or expanded forest product manufacturing infrastructure;

(i) Useful in leveraging funds to match available acquisition moneys;

(j) Positioned to have their development rights extinguished through transfer, purchase, conservation easement, lease, or by some other comparable mechanism; or

(k) Enhancing state fiduciary trust land revenues by repositioning underperforming state trust lands to provide short and long-term revenues to that trust.

NEW SECTION. Sec. 6. (1) The department shall, if it establishes a community forest trust program, submit biennially to the office of financial management and the appropriate committees of the legislature a prioritized list that identifies nominated parcels of state land or state forest land that are suitable for transfer into the community forest trust, where such a transfer is also in the

best interest of the respective trust. The department shall solicit and consider input from the board on a draft list before submitting a final prioritized list.

(2) The list of nominated parcels must reflect consideration of local nominations and the priorities outlined in section 5 of this act and be delivered to the required recipients by November 1st of each even-numbered year.

NEW SECTION. Sec. 7. (1) The department must, prior to using the authority provided in section 4 of this act to acquire land for inclusion in a community forest, obtain from the local community a commitment to preserving the land as a working forest.

(2) Following initial agreement between potential local community partners and the department regarding management and revenue production objectives for the lands in question, the local commitment to preserving the land as a working forest must be demonstrated by the county, city, or other local entity providing a financial contribution to the specific community forest of at least fifty percent of the difference between the parcel's appraised fair market value and the parcel's timber and forest land value. The local community contribution may be provided through any means deemed acceptable by the department and the local contributor, including:

- (a) Traditional financing or bonding;
- (b) The purchase of conservation easements; or
- (c) The purchase or transfer of development rights.

(3) The local financial contribution must be deposited into the park land trust revolving fund created in RCW 43.30.385 and used solely for acquisition of the community forest trust land parcel or parcels for which it is intended.

NEW SECTION. Sec. 8. (1) All lands transferred into community forest trust status must be managed in accordance with a postacquisition management plan developed by the department consistent with this section.

(2) After exercising the authority provided in section 4 of this act to acquire land for inclusion in a community forest, the department must establish a local advisory committee in cooperation with any interested and affected local government.

(3) The department must use the local advisory committee as a source of advice and comment on a postacquisition management plan. Comments and advice should, at a minimum, include plans for how the department will maintain the land's working status and economic viability objectives through revenue-generating activities that are sufficient to generate ongoing revenue at a level that reimburses administrative costs, while satisfying, or contributing to, identified community conservation and recreation objectives.

(4)(a) If, after a good faith effort by all parties, the department and the local advisory committee fail to reach a consensus on a conceptual postacquisition management plan for the parcel in question, the department may either adopt a management plan informed by the community or recommend to the board that the parcel be divested through the existing authority of the department and the board. If the parcel is divested, then, except as otherwise provided in this subsection, proceeds must return to the park land trust revolving fund created in RCW 43.30.385.

(b) Prior to depositing the proceeds of a land divestiture under this subsection to the park land trust revolving fund, the department must first

reimburse local entities that have made financial contributions to the parcel's acquisition as provided in section 7(2) of this act. However, local entities are only eligible for reimbursement upon divestiture under this subsection if the board determines that:

(i) The subsequent parcel use is likely to remain a working forest, the department secures full fair market value for the parcel, and the local entity's contribution was not provided by a state or federal grant; or

(ii) The funds used as part of the local contribution were originally provided through a grant that requires, as a condition of the grant, the repayment of granted dollars if the purposes of the grant are not or cannot be fulfilled and the decision to divest the land creates an inability for the purposes of the grant to be fulfilled.

NEW SECTION. Sec. 9. (1) Any revenue produced on community forest trust lands must be, consistent with RCW 79.64.040, allocated as follows:

(a) All costs incurred by the department in managing the parcel must be fully reimbursed; and

(b) After the department's management costs are reimbursed, any remaining revenue must then be prioritized to fulfill the management objectives for the specific parcel as identified in the postacquisition management plan developed under section 8 of this act consistent with the management principles outlined in section 3 of this act.

(2)(a) If, by the determination of the board, there is revenue remaining in any given biennium after fulfilling the requirements of subsection (1) of this section, then the board has the discretion to reimburse any local entities' eligible financial contributions for acquisition of the parcel under section 7(2) of this act and any state contribution to the acquisition of the parcel up to an amount that represents fifty percent of the difference between the parcel's original appraised fair market value and the parcel's timber and forest land value. However, any funds used as part of the local contribution may not be reimbursed if the funds were originally provided through a state or federal grant, provided through a fully compensated transfer of development rights at fair market value, or provided by a donation of funds or property.

(b) If the board decides to reimburse the state and local contribution, then it must allocate the reimbursement so that fifty percent is provided to the state general fund and fifty percent is provided to any eligible partnering local entities.

(c) Nothing in this section creates an expectation, requirement, or fiduciary duty for the board or the associated community forest trust lands to generate revenue in excess of amounts as provided in subsection (1)(a) of this section.

NEW SECTION. Sec. 10. By September 1, 2014, and periodically, but at least once every ten years thereafter, the department shall provide to the board a review and update of the community forest trust program. The review must include updates on the performance of the community forest trust statewide and notification of any community forest trust parcels not performing according to their management plan. The department is authorized to, consistent with this chapter, recommend to the board action to divest itself of nonperforming community forest trust parcels using existing policies and mechanisms available to the department and the board.

NEW SECTION. Sec. 11. (1) The commissioner may establish and maintain a statewide advisory committee to assist the department in the implementation of this chapter.

(2) If a statewide advisory committee is established, the commissioner shall appoint a balanced representation of interests on the committee, including representatives of state fiduciary trust land beneficiaries, tribal governments, local governments, relevant state agencies, commercial forest landowners, land trusts, and conservation organizations.

(3) The statewide advisory committee shall provide consultation on issues and questions presented by the commissioner and may be dissolved by the commissioner at any time.

(4) Participation on the statewide advisory committee is voluntary and members are not eligible for any form of compensation nor for reimbursement for expenses incurred due to service on the committee.

NEW SECTION. Sec. 12. (1) The commissioner may, if deemed practicable and beneficial by the commissioner, cooperate with interested local governments in establishing community forest districts or local working forest districts that are compatible with the goals identified in this chapter for the community forest trust. Cooperative districts would attempt to voluntarily synchronize the management of community forest trust lands, other public lands, and private lands located within a certain geographic area to further a common set of community goals. If a working forest district encompasses state lands or state forest lands, then their voluntary management to further a common set of community goals must be consistent with the department's fiduciary and other legal obligations to the trust, including the multiple use act in chapter 79.10 RCW.

(2)(a) The department may, in its sole discretion and if it deems sufficient funding to be available, provide technical assistance grants to local communities for the purpose of enabling or furthering the development of community forest management plans consistent with this chapter.

(b) This subsection does not create a private right of action.

Sec. 13. RCW 79.17.210 and 2003 c 334 s 118 are each amended to read as follows:

(1) The legislature finds that the department has a need to maintain the real property asset base it manages and needs an accounting mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200 and the transfer of state lands or state forest lands into community forest trust lands under section 4 of this act. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation.

Sec. 14. RCW 43.30.385 and 2009 c 354 s 9 are each amended to read as follows:

(1) The park land trust revolving fund is to be utilized by the department for the purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state

parcs and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department.

(2) In addition to the other purposes identified in this section, the park land trust revolving fund may be utilized by the department to hold funding for future acquisition of lands for the community forest trust program from willing sellers under section 4 of this act.

(3)(a) Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in ~~((this))~~ the park land trust revolving fund.

(b) The proceeds from real property transferred or disposed under RCW 79.22.060 must be used solely to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed.

(c) Disbursement from the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department. ~~((The proceeds from real property transferred or disposed under RCW 79.22.060 must be solely used to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed.))~~

(4) In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

~~((2))~~ (5) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities.

Sec. 15. RCW 79.64.020 and 2008 c 328 s 6004 are each amended to read as follows:

A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state lands, community forest trust lands, and aquatic lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights-of-way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. ~~((For the 2007-2009 biennium, moneys in the account may be used for the purposes identified in section 3044, chapter 328, Laws of 2008.))~~

Sec. 16. RCW 79.64.040 and 2009 c 564 s 957 are each amended to read as follows:

(1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands, community forest trust lands, and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsections ~~((5))~~ (4) and (6) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) Deductions authorized under this section for transactions pertaining to community forest trust lands must be established at a level sufficient to defray over time the management costs for activities prescribed in a parcel's management plan adopted pursuant to section 8 of this act, and, if deemed appropriate by the board consistent with section 9 of this act, to reimburse the state and any local entities' eligible financial contributions for acquisition of the parcel.

(5) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

~~((5))~~ (6) During the 2009-2011 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board.

Sec. 17. RCW 79.02.010 and 2010 c 126 s 6 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in RCW 79.105.060 that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6)(a) "Forest biomass" means the by-products of: Current forest management activities; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatment prescribed or permitted under chapter 76.06 RCW.

(b) "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under chapter 76.09 RCW, the state forest practices act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

(7) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(8) "Land bank lands" means lands acquired under RCW 79.19.020.

(9) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(10) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, and aquatic lands.

(11) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(12) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(13) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except: (a) Mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW; and (b) forest biomass as provided for under chapter 79.150 RCW.

(14) "Community forest trust lands" means those lands acquired and managed under the provisions of chapter 79.— RCW (the new chapter created in section 19 of this act).

NEW SECTION. Sec. 18. The authorities granted under Title 79 RCW for the management of state lands apply to the community forest trust to the extent consistent with the purposes of this act. The department may develop management procedures deemed necessary by the department to implement this act.

NEW SECTION. Sec. 19. Sections 1 through 12 and 18 of this act constitute a new chapter in Title 79 RCW.

Passed by the House March 5, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 217

[Substitute House Bill 1422]

FOREST BIOMASS—AVIATION FUEL

AN ACT Relating to authorizing the department of natural resources to conduct a forest biomass to aviation fuel demonstration project to facilitate Washington leading the nation in aviation biofuel production; adding a new section to chapter 28B.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 the work that is already underway in exploring the potential of linking Washington's forest products and aeronautics industries in producing a sustainable aviation biofuel with feedstock from the state's public and private forest lands is important to this state's economy and its sustainable energy policies. The sustainable aviation fuel Northwest initiative has set the stage by beginning the process and initiating stakeholder involvement in assessing the options for developing the biofuel industry in the Northwest.

The legislature further finds that the work that is being done by the department of natural resources and our state research universities in exploring opportunities to develop aviation biofuel in Washington will provide the scientific and technological analyses needed to determine a pathway for the sustainable use of forest biomass to produce biofuels.

NEW SECTION. Sec. 2. (1) The departments of natural resources and commerce are authorized to cooperate and consult with the University of Washington and Washington State University in their development of forest biomass to aviation fuel by:

(a) Identifying opportunities for state lands to generate trust income for beneficiaries;

(b) Identifying how to manage trust lands with potential for contributing to biomass to aviation fuel projects in a manner consistent with any findings by the University of Washington concerning operationally and ecologically sustainable feedstock supply;

(c) Identifying the most cost-effective, efficient, and ecologically sound techniques to deliver forest biomass from the forest to the production site;

(d) Addressing and planning to ensure sustainability of forest biomass supply;

(e) Exploring linkages with other biofuel efforts;

(f) Identifying any barriers to developing aviation biofuel in Washington;

(g) Entering into partnerships with research universities and the private sector to conduct a pilot project;

(h) Collaborating with the federal government, other states, and Canadian provinces; and

(i) Identifying and applying for funding sources.

(2) The department of natural resources must provide a report to the governor and the appropriate committees of the legislature:

(a) By December 1, 2011, regarding all of its activities pertaining to forest biomass to aviation fuel, including expenditures and revenue sources;

(b) By December 1, 2011, and December 1, 2012, with a summary of research activities, scientific reports, and pilot projects pertaining to forest biomass to aviation fuel by state research institutions, including the status of ongoing activities and summaries of the findings with their implications for management of forest trust lands;

(c) By December 1, 2011, and December 1, 2012, on the progress of the forest practices board's forest biomass policy work group's consideration of the science, policy, available technologies, and best management practices related to forest biomass harvest, including final recommendations to the forest practices board.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.10 RCW to read as follows:

If a state university or foundation derives income from the commercialization of patents, copyrights, proprietary processes, or licenses developed by the forest biomass to aviation fuel demonstration project in section 2 of this act, a percentage of that income, proportionate to the percent of state resources used to develop and commercialize the patent, copyright, proprietary process, or license must be deposited in the state general fund.

Passed by the House April 13, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.

CHAPTER 218

[Engrossed Substitute House Bill 1509]

FORESTRY RIPARIAN EASEMENT PROGRAM

AN ACT Relating to the forestry riparian easement program; amending RCW 76.13.120, 76.13.140, and 76.13.160; adding new sections to chapter 76.13 RCW; creating a new section; providing an effective date; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 76.13.120 and 2004 c 102 s 1 are each amended to read as follows:

(1) The legislature finds that the state should acquire easements primarily along riparian and other sensitive aquatic areas from qualifying small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 (~~and~~), 76.13.110, 76.13.140, and 76.13.160 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.

(b) "Qualifying small forest landowner" means a landowner meeting all of the following characteristics as of the date the department offers compensation for a forestry riparian easement:

(i) Is a small forest landowner as defined in (d) of this subsection; and

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity.

(c) "Qualifying timber" means those forest trees for which the small forest landowner is willing to grant the state a forestry riparian easement and must meet all of the following:

(i) The forest trees are covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules,~~(, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber);~~

(ii) The forest trees are within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or~~((timber))~~ for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(iii) The forest trees are located within, or affected by forest practices rules pertaining to any one, or all, of the following:

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

(C) Areas of potentially unstable slopes or landforms, verified by the department, and must meet all of the following:

(I) Are addressed in a forest practices application;

(II) Are adjacent to a commercially reasonable harvest area; and

(III) Have the potential to deliver sediment or debris to a public resource or threaten public safety.

~~((c))~~ (d) "Small forest landowner" means a landowner meeting all of the following characteristics:

(i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the~~((forest practices))~~ completed forestry riparian easement application associated with the easement is submitted;

(ii) An entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the~~((department of natural resources'))~~ department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner

shall be deemed to be a small forest landowner. For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted ~~((or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated))~~ and the date that the department offers compensation for the forestry riparian easement. A small forest landowner can include an individual, partnership, ~~((corporate))~~ corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

~~((d))~~ (e) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department ~~((of natural resources))~~ is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by qualifying small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with ~~((subsections (6) and (7) of))~~ this section. The department ~~((of natural resources))~~ may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date ~~((the forest practices application associated with the qualifying timber is submitted to the department of natural resources))~~ of the completed forestry riparian easement application, unless the easement is voluntarily terminated earlier by the department ~~((of natural resources voluntarily))~~, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

~~((6))~~ ~~((Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for~~

~~timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.~~

~~The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.)~~ The small forest landowner office shall determine what constitutes a completed application for a forestry riparian easement. Such an application shall, at a minimum, include documentation of the owner's status as a qualifying small forest landowner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

~~(7) (Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.~~

~~(8))~~ Upon receipt of the qualifying small forest landowner's forestry riparian easement application, and subject to the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forest landowner office shall determine the compensation to be offered to the qualifying small forest landowner for qualifying timber after the department accepts the completed forestry riparian easement application and the landowner has completed marking the boundary of the area containing the qualifying timber. The legislature recognizes that there is not readily available market transaction evidence of value for easements of the nature required by this section, and thus establishes the methodology provided in this subsection to

ascertain the value for forestry riparian easements. Values so determined may not be considered competent evidence of value for any other purpose.

(b) The small forest landowner office, subject to the availability of amounts appropriated for this specific purpose, is responsible for assessing the volume of qualifying timber. However, no more than fifty percent of the total amounts appropriated for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Based on the volume established by the small forest landowner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the complete forestry riparian easement application is received. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(8)(a) Except as provided in subsection (9) of this section and subject to the availability of amounts appropriated for this specific purpose, the small forest landowner office shall offer compensation for qualifying timber to the qualifying small forest landowner in the amount of fifty percent of the value determined by the small forest landowner office, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forest landowner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

(b) If the landowner accepts the offer for qualifying timber, the department shall pay the compensation promptly upon:

(i) Completion of harvest in the area within a commercially reasonable harvest unit with which the forestry riparian easement is associated under an approved forest practices application, unless an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(ii) Verification that the landowner has no outstanding violations under chapter 76.09 RCW or any associated rules; and

(iii) Execution and delivery of the easement to the department.

(c) Upon donation or payment of compensation, the department may record the easement.

(9) For approved forest practices applications (~~where~~) for which the regulatory impact is greater than the average percentage impact for all small forest landowners as determined by an analysis by the department (~~of natural resources analysis~~) under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees (~~left in buffers, special management zones, and those rendered uneconomical to harvest by these rules~~) identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

~~((9))~~ (10) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version ~~((or versions of all))~~ of a forestry riparian easement application as well as all additional documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department ~~((of natural resources))~~ shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department ~~((of natural resources))~~, qualifying small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a ~~((forest))~~ forestry riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the ~~((department of natural resources'))~~ department's and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; ~~((and))~~

(i) A method for internal department ~~((of natural resources))~~ review of small forest landowner office compensation decisions under ~~((subsection (7) of))~~ this section; and

(j) Consistent with section 5 of this act, a method to collect reimbursement from landowners who received compensation for a forestry riparian easement and who, within the first ten years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a nonqualifying landowner.

Sec. 2. RCW 76.13.140 and 2002 c 120 s 3 are each amended to read as follows:

In order to assist small forest landowners to remain economically viable, the legislature intends that the qualifying small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs

for participation in the forestry riparian easement program(~~(—For purposes of this section, "compliance costs" includes)~~), including the cost of preparing and recording the forestry riparian easement, and any business and occupation tax and real estate excise tax imposed because of entering into the forestry riparian easement. The small forest landowner office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest ~~((and fish))~~ practices regulatory requirements related to the ~~((forest))~~ forestry riparian easement program. The department shall reimburse qualifying small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated.

Sec. 3. RCW 76.13.160 and 2004 c 102 s 2 are each amended to read as follows:

When establishing a ~~((forest))~~ forestry riparian easement program applicant's status as a qualifying small forest landowner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forest landowner at the request of the department~~((:))~~. However, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the department from reviewing aggregate or general information provided by the department of revenue.

NEW SECTION. Sec. 4. A new section is added to chapter 76.13 RCW to read as follows:

(1) Before November 1st of each even-numbered year, the department must recommend to the governor a list of all forest riparian easement applications to be funded under RCW 76.13.120. The governor must determine the number of applications to receive funding and then submit the list in the capital budget request to the legislature. The list must include, but not be limited to, the date of the forestry riparian easement application, the type of qualifying timber, estimates of the value of the easement, aerial photograph maps of the application area, and an estimate of administrative costs for purchase of easements.

(2) The governor or the legislature may remove an application from the list if there is evidence that the applicant is a nonqualifying landowner for a forestry riparian easement.

NEW SECTION. Sec. 5. A new section is added to chapter 76.13 RCW to read as follows:

If, within the first ten years after receipt of compensation for a forestry riparian easement, a landowner sells the land on which an easement is located to a nonqualifying landowner, then the selling landowner must reimburse the state for the full compensation received for the forestry riparian easement. The department continues to hold, in the name of the state, the forestry riparian

easement for the full term of the easement. The department may not transfer the easement to any entity other than another state agency.

NEW SECTION. Sec. 6. (1) The chair of the forest practices board shall invite relevant stakeholders to participate in a process that investigates, and ultimately recommends, a potential long-term funding source for the forestry riparian easement program established in chapter 76.13 RCW.

(2) The findings of, and recommendations from, the process required by this section must be reported to the appropriate committees of the legislature in the manner prescribed in RCW 43.01.036 by May 31, 2012.

(3) This section expires July 31, 2012.

***NEW SECTION. Sec. 7.** *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 July 1, 2011.*

*Sec. 7 was vetoed. See message at end of chapter.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

"I am returning herewith, without my approval as to Section 7, Engrossed Substitute House Bill 1509 entitled:

"AN ACT Relating to the forestry riparian easement program."

This bill resolves eligibility requirements for participation and compensation in the Forest Riparian Easement Program and fine-tunes what easements to protect riparian habitat the program will purchase if funding is available. There is no emergent need for the bill to become effective immediately, and therefore the emergency clause in Section 7 of this bill is unnecessary.

For this reason I have vetoed Section 7 of Engrossed Substitute House Bill 1509.

With the exception of Section 7 Engrossed Substitute House Bill 1509 is approved."

CHAPTER 219

[Engrossed House Bill 1177]

ARCHAEOLOGICAL INVESTIGATIONS—PRIVATE LAND

AN ACT Relating to archaeological investigations on private land; amending RCW 27.53.030; and reenacting and amending RCW 27.53.070.

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

Sec. 1. RCW 27.53.030 and 2008 c 275 s 5 are each amended to read as follows:

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

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of

past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(5) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(8) "Professional archaeologist" means a person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal.

(9) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(10) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(11) "Field investigation" means an on-site inspection by a professional archaeologist or by an individual under the direct supervision of a professional archaeologist employing archaeological inspection techniques for both the surface and subsurface identification of archaeological resources and artifacts resulting in a professional archaeological report detailing the results of such inspection.

Sec. 2. RCW 27.53.070 and 2005 c 333 s 21 and 2005 c 274 s 243 are each reenacted and amended to read as follows:

(1) It is the declared intention of the legislature that field investigations on privately owned lands should be ~~((discouraged except))~~ conducted by professional archaeologists in accordance with both the provisions and spirit of this chapter ~~((and))~~. Persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the

department. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in chapter 42.56 RCW to avoid site depredation.

(2) Nothing in this chapter shall be interpreted to allow trespassing on private property.

Passed by the House March 5, 2011.

Passed by the Senate March 31, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 220

[Substitute House Bill 1037]

LEGAL CLAIMS AGAINST THE GOVERNMENT—INCARCERATED PERSONS

AN ACT Relating to restrictions on legal claims initiated by persons serving criminal sentences in correctional facilities; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW to read as follows:

If a person serving a criminal sentence in a federal, state, local, or privately operated correctional facility seeks leave to proceed in state court without payment of filing fees in any civil action or appeal against the state, a state or local governmental agency or entity, or a state or local official, employee, or volunteer acting in such capacity, except an action that, if successful, would affect the duration of the person's confinement, the court shall deny the request for waiver of the court filing fees if the person has, on three or more occasions while incarcerated or detained in any such facility, brought an action or appeal that was dismissed by a state or federal court on grounds that it was frivolous or malicious. One of the three previous dismissals must have involved an action or appeal commenced after the effective date of this section. A court may permit the person to commence the action or appeal without payment of filing fees if the court determines the person is in imminent danger of serious physical injury.

Passed by the House March 3, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 221

[Engrossed Substitute House Bill 1041]

FIREARM RESTRICTIONS—EXEMPTIONS—CORRECTIONAL EMPLOYEES

AN ACT Relating to including correctional employees who have completed government-sponsored law enforcement firearms training to the lists of law enforcement personnel that are exempt from certain firearm restrictions; amending RCW 9.41.060 and 9.41.300; and adding a new section to chapter 9.41 RCW.

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

Sec. 1. RCW 9.41.060 and 2005 c 453 s 3 are each amended to read as follows:

The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers as long as they are employed as such who have completed government-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this state or another state. Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license.

Sec. 2. RCW 9.41.300 and 2008 c 33 s 1 are each amended to read as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter

13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a), (b), (c), and (e) of this section does not apply to correctional personnel or community corrections officers, as long as they are employed as such, who have completed government-sponsored law enforcement firearms training, except that subsection (1)(b) of this section does apply to a correctional employee or community corrections officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

(8) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the

premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

~~((8))~~ (9) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

~~((9))~~ (10) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

~~((10))~~ (11) Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

(12) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

~~((11))~~ (13) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW to read as follows:

The exemptions from firearms restrictions in RCW 9.41.060 and 9.41.300 for correctional personnel and community corrections officers who complete government-sponsored law enforcement firearms training do not create a duty on the part of the state or local governmental entities with respect to the off-duty conduct of correctional personnel and community corrections officers involving the use or misuse of a firearm.

The state of Washington, local governmental entities, and their officers, employees, and agents are not liable for any civil damages caused by the use or misuse of a firearm by off-duty correctional personnel or community corrections officers based on any act or omission in the provision of government-sponsored firearms training to the correctional personnel or community corrections officers.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 222

[Substitute House Bill 1127]

CERTIFIED EXCLUSIVE BARGAINING REPRESENTATIVES

AN ACT Relating to certified exclusive bargaining representatives; and amending RCW 41.56.050 and 41.56.140.

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

Sec. 1. RCW 41.56.050 and 1975 1st ex.s. c 296 s 16 are each amended to read as follows:

(1) In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative, the commission

shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

(2) In the event that a public employer and a bargaining representative are in disagreement as to the merger of two or more bargaining units in the employer's workforce that are represented by the same bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

Sec. 2. RCW 41.56.140 and 1969 ex.s. c 215 s 1 are each amended to read as follows:

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 223

[Substitute House Bill 1133]

MESSAGE PRACTITIONERS—DISPLAY OF LICENSES

AN ACT Relating to the display of massage practitioner licenses; amending RCW 18.108.040; and adding a new section to chapter 18.108 RCW.

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

Sec. 1. RCW 18.108.040 and 1995 c 353 s 1 are each amended to read as follows:

(1) It shall be unlawful to advertise the practice of massage using the term massage or any other term that implies a massage technique or method in any public or private publication or communication by a person not licensed by the secretary as a massage practitioner ~~((or without printing in display advertisement the license number of the massage practitioner)).~~

(2) Any person who holds a license to practice as a massage practitioner in this state may use the title "licensed massage practitioner" and the abbreviation "L.M.P.". No other persons may assume such title or use such abbreviation or any other word, letters, signs, or figures to indicate that the person using the title is a licensed massage practitioner.

(3) A massage practitioner's name and license number must conspicuously appear on all of the massage practitioner's advertisements.

NEW SECTION. Sec. 2. A new section is added to chapter 18.108 RCW to read as follows:

A massage practitioner licensed under this chapter must conspicuously display his or her license in his or her principal place of business. If the massage practitioner does not have a principal place of business or conducts business in

any other location, he or she must have a copy of his or her license available for inspection while performing any activities related to massage therapy.

Passed by the House March 2, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 224

[Substitute House Bill 1135]

MOTOR VEHICLES—REFRIGERANTS

AN ACT Relating to refrigerants for motor vehicles; and amending RCW 46.37.470.

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

Sec. 1. RCW 46.37.470 and 2009 c 256 s 1 are each amended to read as follows:

(1) "Air conditioning equipment," as used or referred to in this section, means mechanical vapor compression refrigeration equipment (~~(which)~~ that is used to cool the driver's or passenger compartment of any motor vehicle.

(2) (~~Such~~) Air conditioning equipment (~~(shall)~~ must be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public (~~and shall~~). Air conditioning equipment may not contain any refrigerant (~~(which)~~ that is toxic to persons or (~~(which)~~ that is flammable, unless the refrigerant is (~~included in the list published by the United States environmental protection agency, as it exists on July 26, 2009, as a safe alternative motor vehicle air conditioning substitute for chlorofluorocarbon 12 under 42 U.S.C. Sec. 7671k(e))~~ allowed under the department of ecology's motor vehicle emission standards adopted under RCW 70.120A.010.

(3) The state patrol may (~~adopt and~~) enforce safety requirements, regulations, and specifications consistent with the requirements of this section applicable to (~~such~~) air conditioning equipment which (~~(shall)~~ must correlate with and, so far as possible, conform to the current recommended practice or standard applicable to (~~such~~) air conditioning equipment approved by the society of automotive engineers.

(4) (~~No~~) A person (~~(shall have for sale, offer for sale,)~~ may not sell(~~(;)~~) or equip (~~(any)~~), for use in this state, a new motor vehicle with any (~~such~~) air conditioning equipment unless it complies with the requirements of this section.

(5) (~~No~~) A person (~~(shall operate)~~ may not register or license for use on any highway any new motor vehicle equipped with any air conditioning equipment unless (~~(said)~~) the equipment complies with the requirements of this section.

Passed by the House April 14, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 225

[Substitute House Bill 1136]

SPECIAL LICENSE PLATES—VOLUNTEER FIREFIGHTERS

AN ACT Relating to volunteer firefighter special license plates; amending RCW 46.18.200, 46.17.220, and 46.68.420; reenacting and amending RCW 46.18.060; and providing an effective date.

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

Sec. 1. RCW 46.18.200 and 2010 c 161 s 611 are each amended to read as follows:

(1) ~~((The legislature recognizes that the special license plate review board established in RCW 46.16.705 reviews and approves applications for special license plate series.~~

~~(2))~~ Special license plate series reviewed and approved by the ~~((special license plate review board))~~ department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the ~~((special license plate review board))~~ department.

~~((3) The special license plate review board approves, and))~~ (2) The department approves and shall issue~~(s)~~ the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.
Gonzaga University alumni <u>association</u>	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.

Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington <u>Volunteer firefighters</u>	Recognizes the Washington snowsports industry. <u>Recognizes volunteer firefighters.</u>
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

~~((4))~~ (3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a

maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.

Sec. 2. RCW 46.17.220 and 2010 c 161 s 521 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter ~~((46.16))~~ 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(b) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(c) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(d) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(e) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(f) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(g) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(h) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(j) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(k) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(m) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(n) Ride share	\$ 25.00	N/A	RCW 46.68.030
(o) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(p) Ski and ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(q) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(r) <u>Volunteer firefighters</u>	<u>\$40.00</u>	<u>\$30.00</u>	<u>RCW 46.68.420</u>
(s) Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
((t)) (t) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
((tt)) (u) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
((ttt)) (v) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
((ttt)) (w) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
((ttt)) (x) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

Sec. 3. RCW 46.68.420 and 2010 c 161 s 809 are each amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220 ~~((that were approved by the special license plate review board under RCW 46.18.200));~~

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents

Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
<u>Volunteer firefighters</u>	<u>Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need</u>
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

Sec. 4. RCW 46.18.060 and 2010 1st sp.s. c 7 s 94 and 2010 c 161 s 604 are each reenacted and amended to read as follows:

(1) ~~((The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

~~((2))~~) The ~~((board))~~ department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

~~((3))~~) (2) Duties of the ~~((board))~~ department include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the ~~((senate and house transportation committees))~~ joint transportation committee;

(b) Report annually to the ~~((senate and house of representatives transportation committees))~~ joint transportation committee on the special license plate applications that were considered by the ~~((board))~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~((the department,))~~ the ~~((chairs of the senate and house of representatives transportation committees))~~ joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~((board))~~ department may submit a recommendation to discontinue a special plate series to the ~~((chairs of the senate and house of representatives transportation committees; and~~

~~((e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply))~~ joint transportation committee.

~~((4))~~) (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~((the special license plate review board created in RCW 46.16.705 and))~~ the department ~~((are))~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The volunteer firefighters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section.

NEW SECTION. Sec. 5. This act takes effect January 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 226

[Substitute House Bill 1211]

UTILITY SERVICES—COLLECTION OF DONATIONS—HUNGER PROGRAMS

AN ACT Relating to utility donations to hunger programs; adding a new section to chapter 54.16 RCW; adding a new section to chapter 35.92 RCW; and adding a new section to chapter 35A.80 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 54.16 RCW to read as follows:

(1) Public utility districts may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by public utility districts under this section must be used by the public utility district to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a public utility district from requesting voluntary donations to support other programs.

NEW SECTION. Sec. 2. A new section is added to chapter 35.92 RCW to read as follows:

(1) Municipal utilities under this chapter may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by municipal utilities under this section must be used by the municipal utility to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a municipal utility from requesting voluntary donations to support other programs.

NEW SECTION. Sec. 3. A new section is added to chapter 35A.80 RCW to read as follows:

(1) Code cities providing utility services under this chapter may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by code cities under this section must be used by the code city to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a code city providing utility services from requesting voluntary donations to support other programs.

Passed by the House April 13, 2011.

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CHAPTER 227

[House Bill 1229]

COMMERCIAL DRIVER'S LICENSES

AN ACT Relating to certain commercial motor vehicle provisions; amending RCW 46.25.010, 46.25.090, 46.32.100, and 46.20.049; reenacting and amending RCW 46.25.080; adding a new section to chapter 46.25 RCW; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.25.010 and 2009 c 181 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to ~~((the CMVSA))~~ 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

~~((23))~~ (24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

Sec. 2. RCW 46.25.080 and 2004 c 249 s 8 and 2004 c 187 s 5 are each reenacted and amended to read as follows:

(1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

(a) The name and residence address of the person;

(b) The person's color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;

(e) The person's social security number or any number or identifier deemed appropriate by the department;

(f) The person's signature;

(g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;

(h) The name of the state; and

(i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles, other than school buses, carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

(vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(viii) "S" authorizes driving school buses.

(ix) "V" means that the driver has been issued a medical variance.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information:

(a) Through the commercial driver's license information system;

(b) Through the national driver register;

(c) From the current state of record; and

(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after July 1, 2005, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of ~~((that fact,))~~ the information required under 49 C.F.R. Sec. 383.73 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person.

(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(7) When applying for renewal of a commercial driver's license, the applicant shall:

(a) Complete the application form required by RCW 46.25.070(1), providing updated information and required certifications;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement.

NEW SECTION. Sec. 3. A new section is added to chapter 46.25 RCW to read as follows:

(1)(a) Any person applying for a CDL must certify that he or she is or expects to be engaged in one of the following types of driving:

- (i) Nonexcepted interstate;
- (ii) Excepted interstate;
- (iii) Nonexcepted intrastate; or
- (iv) Excepted intrastate.

(b) From January 30, 2012, to January 30, 2014, the department may require that any person holding a CDL prior to the effective date of this section must provide the department with the certification required under (a) of this subsection. The CDL of a person failing to submit the required certification is subject to downgrade under subsection (4) of this section.

(2) A CDL applicant or holder who certifies under subsection (1)(a)(i) of this section that he or she is or expects to be engaged in nonexcepted interstate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. Upon submission, a copy of the medical examiner's certificate must be date-stamped by the department. A CDL holder who certifies under subsection (1)(a)(i) of this section must submit a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a commercial driver's license, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when submitted under subsection (2) of this section, must be retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is submitted under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73(j)(1)(iii) as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be posted to the CDLIS driver record within ten calendar days from the date submitted. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the CDL privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(ii) Initiate procedures for downgrading the license. The CDL downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) Beginning January 30, 2014, if a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a)(i) of this section that he or she is operating in nonexcepted interstate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL has been downgraded under this subsection may restore the CDL privilege by providing the necessary certifications or medical variance information to the department.

Sec. 4. RCW 46.25.090 and 2006 c 327 s 4 are each amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ~~((ninety))~~ one hundred eighty days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than ~~((one))~~ two years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation

test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action.

Sec. 5. RCW 46.32.100 and 2010 c 161 s 1116 are each amended to read as follows:

(1)(a) In addition to all other penalties provided by law, and except as provided otherwise in (a)(i), (ii), or (iii) of this subsection, a commercial motor vehicle that is subject to compliance reviews 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.

(i) It is a violation of this chapter for a person operating a commercial motor vehicle to fail to comply with the requirements 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 each violation the person is liable for a penalty of five hundred dollars.

(ii) The driver of a commercial motor vehicle who ~~((violates))~~ is convicted of violating an out-of-service order is liable for a penalty of at least ~~((one))~~ two thousand ~~((one))~~ five hundred dollars ~~((but not more than two thousand seven hundred fifty dollars for each))~~ for a first violation, and not less than five thousand dollars for second or subsequent violation.

(iii) An employer who allows ~~((a driver to operate))~~ the operation of a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than ~~((eleven))~~ twenty-five thousand dollars for each violation.

(iv) Each violation under this subsection (1)(a) is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16A.010, and vehicle registration to operate. 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.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars for each violation. 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.

(d) A high-risk carrier is liable for double the amount of the penalty of a prior violation if the high-risk carrier repeats the same violation during a follow-up compliance review. Each repeat violation is a separate and distinct offense, and in case of a repeat continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16A.010, for

violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.550. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due.

(a)(i) Any motor carrier who incurs a penalty as provided in this section, except for a high-risk carrier that incurs a penalty for a repeat violation during a follow-up compliance review, may, upon written application, request that the state patrol mitigate the penalty. An application for mitigation must be received by the state patrol within twenty days of the receipt of notice.

(ii) The state patrol may decline to consider any application for mitigation.

(b) Any motor carrier who incurs a penalty as provided in this section has a right to an administrative hearing under chapter 34.05 RCW to contest the violation or the penalty imposed, or both. In all such hearings, the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the later of (i) receipt of the notice imposing the penalty, or (ii) disposition of a request for mitigation, or the right to a hearing is waived.

(c) 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.

Sec. 6. RCW 46.20.049 and 2005 c 314 s 309 are each amended to read as follows:

There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be ~~((thirty))~~ sixty-one dollars for the original commercial driver's license or subsequent renewals. If the commercial driver's license is renewed or extended for a period other than five years, the fee for each class shall be ~~((six))~~ twelve dollars and twenty cents for each year that the commercial driver's license is renewed or extended. The fee shall be deposited in the highway safety fund.

NEW SECTION. Sec. 7. Sections 1 through 3 of this act take effect January 30, 2012.

Passed by the House April 21, 2011.
Passed by the Senate April 21, 2011.
Approved by the Governor May 3, 2011.
Filed in Office of Secretary of State May 4, 2011.

CHAPTER 228

[Substitute House Bill 1315]

NURSING HOMES—EMPLOYMENT

AN ACT Relating to employment of physicians by nursing homes; reenacting and amending RCW 74.42.010; adding a new section to chapter 18.51 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 18.51 RCW to read as follows:

(1) A nursing home licensed under this chapter may employ physicians for the provision of professional services to its residents under the following conditions:

(a) The nursing home may not in any manner, directly or indirectly, supplant, diminish, or regulate any employed physician's judgment concerning the practice of medicine or the diagnosis and treatment of any patient; and

(b) The employed physicians may provide professional services only to residents of the nursing home or a related living facility.

(2) The employment of physicians as authorized by this section may be through the following entities:

(a) The entity licensed to operate the nursing home; or

(b) A separate entity authorized to conduct business in the state of Washington that has common or overlapping ownership as an affiliate or subsidiary of the licensee, as long as the licensee complies with subsection (3) of this section.

(3) Nothing in this section relieves the licensee of its ultimate responsibility for the daily operations of the nursing home.

(4) Nothing in this section may be construed to interfere with the federal resident rights requirements found in 42 C.F.R. 483.10, or successor rules, or found in this chapter, chapter 74.42 RCW, or the rules adopted by the department addressing resident's rights under this chapter or chapter 74.42 RCW.

(5) As used in this section, "related living facility" means (a) a separate nursing home that is owned, controlled, or managed by the same or an affiliated or subsidiary entity; or (b) a facility that (i) provides independent living services or boarding home services under chapter 18.20 RCW, in a single contiguous campus as the nursing home, and (ii) is owned, controlled, or managed by the same or related entity as the nursing home. For purposes of this subsection "contiguous" means land adjoining or touching property on which the nursing home is located, including land divided by a public road.

Sec. 2. RCW 74.42.010 and 2010 c 94 s 27 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) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(6) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(7) "Physician" means a person practicing pursuant to chapter 18.57 or 18.71 RCW, including, but not limited to, a physician employed by the facility as provided in chapter 18.51 RCW.

~~(8)~~ "Physician assistant" means a person practicing pursuant to chapter 18.57A ~~((and))~~ or 18.71A RCW.

~~((8))~~ (9) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

~~((9))~~ (10) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

~~((10))~~ (11) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010.

NEW SECTION. Sec. 3. The department of social and health services shall monitor nursing homes who hire physicians on staff and report to the legislature by January 1, 2013. The report shall include information on consumer satisfaction and medical cost implications of including physicians on staff in nursing facilities.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 229

[Substitute House Bill 1329]

SPECIAL LICENSE PLATES—MUSIC MATTERS

AN ACT Relating to "Music Matters" special license plates; amending RCW 46.18.200, 46.17.220, and 46.68.420; reenacting and amending RCW 46.18.060; adding a new section to chapter 46.04 RCW; and providing an effective date.

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

Sec. 1. RCW 46.18.200 and 2010 c 161 s 611 are each amended to read as follows:

(1) ~~((The legislature recognizes that the special license plate review board established in RCW 46.16.705 reviews and approves applications for special license plate series.~~

~~(2))~~ Special license plate series reviewed and approved by the ~~((special license plate review board))~~ department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the ~~((special license plate review board))~~ department.

~~((3) The special license plate review board approves, and)~~ (2) The department approves and shall issue(;) the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork, approved by the special license plate review board and the legislature.
Gonzaga University alumni	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.

Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
<u>Music matters</u>	<u>Displays the "Music Matters" logo.</u>
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington	Recognizes the Washington snowsports industry.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

(4) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Music Matters license plates" means special license plates issued under RCW 46.18.200 that display the "Music Matters" logo.

Sec. 3. RCW 46.17.220 and 2010 c 161 s 521 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter ~~((46.16))~~ 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(b) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(c) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(d) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(e) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(f) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(g) Gonzaga University alumni	\$ 40.00	\$ 30.00	RCW 46.68.420
(h) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(j) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(k) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(m) <u>Music matters</u>	\$ <u>40.00</u>	\$ <u>30.00</u>	<u>RCW 46.68.420</u>
(<u>n</u>) <u>Professional firefighters and paramedics</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((n)) (<u>o</u>) <u>Ride share</u>	\$ 25.00	N/A	RCW 46.68.030
((o)) (<u>p</u>) <u>Share the road</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((p)) (<u>q</u>) <u>Ski and ride Washington</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((q)) (<u>r</u>) <u>Square dancer</u>	\$ 40.00	N/A	RCW 46.68.070
((r)) (<u>s</u>) <u>Washington lighthouses</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((s)) (<u>t</u>) <u>Washington state parks</u>	\$ 40.00	\$ 30.00	RCW 46.68.425
((t)) (<u>u</u>) <u>Washington's national parks</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((u)) (<u>v</u>) <u>Washington's wildlife collection</u>	\$ 40.00	\$ 30.00	RCW 46.68.425
((v)) (<u>w</u>) <u>We love our pets</u>	\$ 40.00	\$ 30.00	RCW 46.68.420
((w)) (<u>x</u>) <u>Wild on Washington</u>	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the

taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

Sec. 4. RCW 46.68.420 and 2010 c 161 s 809 are each amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220 ~~((that were approved by the special license plate review board under RCW 46.18.200));~~

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
<u>Music matters awareness</u>	<u>Promote music education in schools throughout Washington</u>
Share the road	Promote bicycle safety and awareness education in communities throughout Washington

Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

Sec. 5. RCW 46.18.060 and 2010 1st sp.s. c 7 s 94 and 2010 c 161 s 604 are each reenacted and amended to read as follows:

(1) ~~((The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.~~

~~(2))~~ (2) The ~~((board))~~ department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

~~((3))~~ (2) Duties of the ~~((board))~~ department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present

those annual financial reports to the ~~((senate and house transportation committees))~~ joint transportation committee;

(b) Report annually to the ~~((senate and house of representatives transportation committees))~~ joint transportation committee on the special license plate applications that were considered by the ~~((board))~~ department;

(c) Issue approval and rejection notification letters to sponsoring organizations, ~~((the department;))~~ the ~~((chairs of the senate and house of representatives transportation committees))~~ joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The ~~((board))~~ department may submit a recommendation to discontinue a special plate series to the chairs of the ~~((senate and house of representatives transportation committees; and~~

~~((e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates for which an organization or a governmental entity may apply))~~ joint transportation committee.

~~((4))~~ (3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, ~~((the special license plate review board created in RCW 46.16.705 and))~~ the department ~~((are))~~ is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The Music Matters license plates created under RCW 46.18.200 are exempt from the requirements of subsection (3) of this section.

NEW SECTION. Sec. 6. This act takes effect January 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 230

[House Bill 1358]

MOTOR VEHICLES—COMBINATIONS

AN ACT Relating to combination of vehicles; and amending RCW 46.44.037.

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

Sec. 1. RCW 46.44.037 and 1991 c 143 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert

a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) ~~((A combination not exceeding seventy-five feet in overall length consisting of four trucks or truck tractors used in driveaway service where three of the vehicles are towed by the fourth in triple saddle mount position;~~

(3)) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030.

Passed by the House February 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 231

[Substitute House Bill 1384]

TRANSPORTATION PROJECTS—FEDERAL FUNDING—CONTRACTS

AN ACT Relating to public improvement contracts involving certain federally funded transportation projects; reenacting and amending RCW 60.28.011; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes that federal regulations include requirements that pertain to contracts funded by federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor's work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond.

Sec. 2. RCW 60.28.011 and 2009 c 432 s 5 and 2009 c 219 s 6 are each reenacted and amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: ~~((a))~~ (i) The claims of any person arising under the contract; and ~~((b))~~ (ii) the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts involving the construction, alteration, repair, or improvement of any highway, road, or street funded in whole or in part by federal transportation funds shall rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due. The contract bond

must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the

bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the

retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210.

Passed by the House March 5, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 232

[House Bill 1454]

BLOODBORNE PATHOGENS—TESTING

AN ACT Relating to testing for bloodborne pathogens; amending RCW 70.24.340; and reenacting and amending RCW 70.24.105.

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

Sec. 1. RCW 70.24.105 and 1997 c 345 s 2 and 1997 c 196 s 6 are each reenacted and amended to read as follows:

(1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception

of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

~~(g) ((Local law enforcement agencies to the extent provided in RCW 70.24.034;~~

~~(h))~~ Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

~~((i))~~ (h) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test. If the requestor also requested that testing for bloodborne pathogens be conducted pursuant to RCW 70.24.340 and the state health or local health officer performs the tests, the requestor must also be informed of the results of those tests;

~~((j))~~ (i) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims.

Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

~~((k))~~ (j) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a ~~((mandatory))~~ mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)((+)) (h) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)((+)) (h) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing.

Sec. 2. RCW 70.24.340 and 1997 c 345 s 3 are each amended to read as follows:

(1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

- (a) Convicted of a sexual offense under chapter 9A.44 RCW;
- (b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or
- (c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. A person eligible to request a state or local health official to order HIV testing under this chapter and board rule may also request a state or local health officer to order testing for other bloodborne pathogens. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order, which may require additional testing for other bloodborne pathogens.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court.

Passed by the House February 14, 2011.
Passed by the Senate April 8, 2011.
Approved by the Governor May 3, 2011.
Filed in Office of Secretary of State May 4, 2011.

CHAPTER 233

[Substitute House Bill 1483]

TRAFFIC INFRACTIONS—NOTICE—PAYMENT PLAN

AN ACT Relating to traffic infractions; and amending RCW 46.63.060.

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

Sec. 1. RCW 46.63.060 and 2006 c 270 s 2 are each amended to read as follows:

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege will be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation,

refusal of the department to renew the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied.

(3) A form for a notice of traffic infraction printed after the effective date of this section must include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110.

Passed by the House March 5, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 234

[Substitute House Bill 1567]

PEACE AND RESERVE OFFICERS—BACKGROUND INVESTIGATION

AN ACT Relating to background investigations for peace officers and reserve officers; and amending RCW 43.101.080, 43.101.095, and 43.101.105.

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

Sec. 1. RCW 43.101.080 and 2008 c 69 s 3 are each amended to read as follows:

The commission shall have all of the following powers:

- (1) To meet at such times and places as it may deem proper;
- (2) To adopt any rules and regulations as it may deem necessary;
- (3) To contract for services as it deems necessary in order to carry out its duties and responsibilities;
- (4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;
- (5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;
- (6) To select and employ an executive director, and to empower him or her to perform such duties and responsibilities as it may deem necessary;
- (7) To assume legal, fiscal, and program responsibility for all training conducted by the commission;
- (8) To establish, by rule and regulation, standards for the training of criminal justice personnel where such standards are not prescribed by statute;
- (9) To own, establish, and operate, or to contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel and to purchase, lease, or otherwise acquire, subject to the approval of the department of general administration, a training facility or facilities necessary to the conducting of such programs;
- (10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;
- (11) To review and approve or reject standards for instructors of training programs for criminal justice personnel, and to employ personnel on a temporary basis as instructors without any loss of employee benefits to those instructors;
- (12) To direct the development of alternative, innovate, and interdisciplinary training techniques;

(13) To review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards recommended by the training standards and education boards;

(14) To allocate financial resources among training and education programs conducted by the commission;

(15) To allocate training facility space among training and education programs conducted by the commission;

(16) To issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(17) To provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(18) To establish rules and regulations recommended by the training standards and education boards prescribing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;

(19) To require ~~((that each applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a fully commissioned reserve officer take and successfully pass a psychological examination))~~ county, city, or state law enforcement agencies that make a conditional offer of employment to an applicant as a fully commissioned peace officer or a reserve officer to administer a background investigation including a check of criminal history, a psychological examination, and a polygraph test or similar assessment ((procedure as administered by county, city, or state law enforcement agencies as a condition of employment as a peace officer)) to each applicant, the results of which shall be used by the employer to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer. The background investigation, psychological examination, and the polygraph examination shall be administered in accordance with the requirements of RCW 43.101.095(2). The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee;

(20) To promote positive relationships between law enforcement and the citizens of the state of Washington by allowing commissioners and staff to participate in the "chief for a day program." The executive director shall designate staff who may participate. In furtherance of this purpose, the commission may accept grants of funds and gifts and may use its public facilities for such purpose. At all times, the participation of commissioners and staff shall comply with chapter 42.52 RCW and chapter 292-110 WAC.

All rules and regulations adopted by the commission shall be adopted and administered pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

Sec. 2. RCW 43.101.095 and 2009 c 139 s 1 are each amended to read as follows:

(1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant ~~((that))~~ who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall ~~((successfully pass))~~ submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or similar ((test)) assessment as administered by the county, city, or state law enforcement agency ~~((that complies with the following requirements:~~

~~(i) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW in compliance with standards established in rules of the commission.~~

~~((ii)), the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer.~~

(i) The background investigation including a check of criminal history shall be administered by the county, city, or state law enforcement agency that made the conditional offer of employment in compliance with standards established in the rules of the commission.

(ii) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission.

(iii) The polygraph ((examination or similar assessment)) test shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association and in compliance with standards established in rules of the commission.

(iv) Any other test or assessment to be administered as part of the background investigation shall be administered in compliance with standards established in rules of the commission.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a

payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

(6) The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment by the commission or peace officer certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(7) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

Sec. 3. RCW 43.101.105 and 2005 c 434 s 3 are each amended to read as follows:

(1) Upon request by a peace officer's employer or on its own initiative, the commission may deny or revoke certification of any peace officer, after written notice and hearing, if a hearing is timely requested by the peace officer under RCW 43.101.155, based upon a finding of one or more of the following conditions:

(a) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;

(b) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;

(c) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;

(d) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2002;

(e) The peace officer's certificate was previously issued by administrative error on the part of the commission; or

(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

(2) After July 24, 2005, the commission shall deny certification to any applicant (~~that~~) who has lost his or her certification as a result of a break in service of more than twenty-four consecutive months if that applicant failed to ~~((successfully pass the psychological examination and the polygraph test or similar assessment procedure required in))~~ comply with the requirements set forth in RCW 43.101.080(19) and 43.101.095(2)~~((as administered by county, city, or state law enforcement agencies))~~.

Passed by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 235

[House Bill 1640]

RESPIRATORY CARE PRACTITIONERS

AN ACT Relating to respiratory care practitioners; and amending RCW 18.89.020 and 18.89.040.

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

Sec. 1. RCW 18.89.020 and 1997 c 334 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) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Respiratory care practitioner" means an individual licensed under this chapter.

(4) ~~((("Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.))~~ "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW;

or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, or an osteopathic physician assistant licensed under chapter 18.57A RCW.

Sec. 2. RCW 18.89.040 and 1999 c 84 s 1 are each amended to read as follows:

(1) A respiratory care practitioner licensed under this chapter is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other systems, and is under the direct order and under the qualified medical direction of a ~~((physician))~~ health care practitioner. The practice of respiratory care includes:

(a) The use and administration of prescribed medical gases, exclusive of general anesthesia;

(b) The use of air and oxygen administering apparatus;

(c) The use of humidification and aerosols;

(d) The administration, to the extent of training, as determined by the secretary, of prescribed pharmacologic agents related to respiratory care;

(e) The use of mechanical ventilatory, hyperbaric, and physiological support;

(f) Postural drainage, chest percussion, and vibration;

(g) Bronchopulmonary hygiene;

(h) Cardiopulmonary resuscitation as it pertains to advanced cardiac life support or pediatric advanced life support guidelines;

(i) The maintenance of natural and artificial airways and insertion, without cutting tissues, of artificial airways, as prescribed by a ~~((physician))~~ health care practitioner;

(j) Diagnostic and monitoring techniques such as the collection and measurement of cardiorespiratory specimens, volumes, pressures, and flows;

(k) The insertion of devices to draw, analyze, infuse, or monitor pressure in arterial, capillary, or venous blood as prescribed by a ~~((physician or an advanced registered nurse practitioner as authorized by the nursing care quality assurance commission under chapter 18.79 RCW))~~ health care practitioner; and

(l) Diagnostic monitoring of and therapeutic interventions for desaturation, ventilatory patterns, and related sleep abnormalities to aid the ~~((physician))~~ health care practitioner in diagnosis. This subsection does not prohibit any person from performing sleep monitoring tasks as set forth in this subsection under the supervision or direction of a licensed health care provider.

(2) Nothing in this chapter prohibits or restricts:

(a) The practice of a profession by individuals who are licensed under other laws of this state who are performing services within their authorized scope of practice, that may overlap the services provided by respiratory care practitioners;

(b) The practice of respiratory care by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and rules of the United States;

(c) The practice of respiratory care by a person pursuing a supervised course of study leading to a degree or certificate in respiratory care as a part of an accredited and approved educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee and limited to the extent of demonstrated proficiency of completed curriculum, and under direct supervision;

(d) The use of the title "respiratory care practitioner" by registered nurses authorized under chapter 18.79 RCW; or

(e) The practice without compensation of respiratory care of a family member.

Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter.

Passed by the House February 25, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 236

[Substitute House Bill 1718]

OFFENDERS WITH DEVELOPMENTAL DISABILITIES—TRAUMATIC BRAIN INJURIES

AN ACT Relating to offenders with developmental disabilities or traumatic brain injuries; amending RCW 2.28.180; and adding a new section to chapter 70.48 RCW.

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

Sec. 1. RCW 2.28.180 and 2005 c 504 s 501 are each amended to read as follows:

(1) Counties may establish and operate mental health courts.

(2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and symptoms of mental illness among nonviolent, ~~((mentally ill))~~ felony and nonfelony offenders with mental illnesses and recidivism among nonviolent felony and nonfelony offenders who have developmental disabilities as defined in RCW 71A.10.020 or who have suffered a traumatic brain injury by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a mental health court program must first:

(i) Exhaust all federal funding that is available to support the operations of its mental health court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for mental health court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for mental health court operations and associated services.

(b) Any county that establishes a mental health court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The mental health court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from psychiatric treatment or treatment related to his or her developmental disability or traumatic brain injury;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person.

NEW SECTION. Sec. 2. A new section is added to chapter 70.48 RCW to read as follows:

When a jail has determined that a person in custody has or may have a developmental disability as defined in RCW 71A.10.020 or a traumatic brain injury, upon transfer of the person to a department of corrections facility or other jail facility, every reasonable effort shall be made by the transferring jail staff to communicate to receiving staff the nature of the disability, as determined by the jail and any necessary accommodation for the person as identified by the transferring jail staff.

Passed by the House April 14, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 237

[Substitute House Bill 1728]

FOOD ESTABLISHMENTS—SERVICE ANIMALS

AN ACT Relating to requiring businesses where food for human consumption is sold or served to allow persons with disabilities to bring their service animals onto the business premises; amending RCW 49.60.215; and adding a new section to chapter 49.60 RCW.

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

Sec. 1. RCW 49.60.215 and 2009 c 164 s 2 are each amended to read as follows:

(1) It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law:

PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

(2) This section does not apply to food establishments, as defined in section 2 of this act, with respect to the use of a trained dog guide or service animal by a person with a disability. Food establishments are subject to section 2 of this act with respect to trained dog guides and service animals.

NEW SECTION. Sec. 2. A new section is added to chapter 49.60 RCW to read as follows:

(1) It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any food establishment, except for conditions and limitations established by law and applicable to all persons, on the basis of the use of a dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

(2) A food establishment shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability in accordance with subsection (1) of this section if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a facility, a food establishment shall act in accordance with all applicable laws and regulations.

(3) For the purposes of this section:

(a) "Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Except as provided in subsection (2) of this section, other species of animals, whether wild or domestic, trained or untrained, are not service animals. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

(b) "Food establishment" means a place of business that sells or serves food for human consumption with a North American industry classification system

code within "445110," "445120," "445210," "445220," "445230," "445291," "445292," "445299," "452910," "722110," "722211," "722212," "722213," or "722410."

Passed by the House February 26, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 238

[House Bill 1794]

ASSAULT—THIRD DEGREE—COURT-RELATED EMPLOYEES

AN ACT Relating to adding court-related employees to the assault in the third degree statute; and amending RCW 9A.36.031.

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

Sec. 1. RCW 9A.36.031 and 2005 c 458 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, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is 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 firefighter 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 peace officer with a projectile stun gun; or

(i) 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; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony.

Passed by the House March 3, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 239

[Substitute House Bill 1811]

HOMELESSNESS SERVICES—COLLECTION OF INFORMATION—CONSENT

AN ACT Relating to allowing for informed telephonic consent for access to housing or homelessness services; and amending RCW 43.185C.180.

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

Sec. 1. RCW 43.185C.180 and 2006 c 349 s 8 are each amended to read as follows:

(1) In order to improve services for the homeless, the department, within amounts appropriated by the legislature for this specific purpose, shall implement the Washington homeless client management information system for the ongoing collection and updates of information about all homeless individuals in the state.

(2) Information about homeless individuals for the Washington homeless client management information system shall come from the Washington homeless census and from state agencies and community organizations providing services to homeless individuals and families.

(a) Personally identifying information about homeless individuals for the Washington homeless client management information system may only be collected after having obtained informed, reasonably time limited (i) written consent from the homeless individual to whom the information relates, or (ii) telephonic consent from the homeless individual, provided that written consent is obtained at the first time the individual is physically present at an organization with access to the Washington homeless client management information system. Safeguards consistent with federal requirements on data collection must be in place to protect homeless individuals' rights regarding their personally identifying information.

(b) Data collection under this subsection shall be done in a manner consistent with federally informed consent guidelines regarding human research which, at a minimum, require that individuals ((be informed)) receive:

(i) Information about the expected duration of their participation(()) in the Washington homeless client management information system;

(ii) An explanation of whom to contact for answers to pertinent questions about the data collection and their rights regarding their personal identifying information(());

(iii) An explanation regarding whom to contact in the event of injury to the individual related to the Washington homeless client ((survey,)) management information system;

(iv) A description of any reasonably foreseeable risks to the homeless individual(()); and

(v) A statement describing the extent to which confidentiality of records identifying the individual will be maintained.

(c) The department must adopt policies governing the appropriate process for destroying Washington homeless client management information system paper documents containing personally identifying information when the paper documents are no longer needed. The policies must not conflict with any federal data requirements.

(3) The Washington homeless client management information system shall serve as an online information and referral system to enable local governments and providers to connect homeless persons in the database with available housing and other support services. Local governments shall develop a capacity for continuous case management, including independent living plans, when appropriate, to assist homeless persons.

(4) The information in the Washington homeless client management information system will also provide the department with the information to consolidate and analyze data about the extent and nature of homelessness in Washington state, giving emphasis to information about the extent and nature of homelessness in Washington state among families with children.

(5) The system may be merged with other data gathering and reporting systems and shall:

(a) Protect the right of privacy of individuals;

(b) Provide for consultation and collaboration with all relevant state agencies including the department of social and health services, experts, and community organizations involved in the delivery of services to homeless persons; and

(c) Include related information held or gathered by other state agencies.

(6) Within amounts appropriated by the legislature, for this specific purpose, the department shall evaluate the information gathered and disseminate the analysis and the evaluation broadly, using appropriate computer networks as well as written reports.

(7) The Washington homeless client management information system shall be implemented by December 31, 2009, and updated with new homeless client information at least annually.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 240

[Substitute House Bill 1858]

SEMI-SECURE AND SECURE CRISIS RESIDENTIAL CENTERS AND HOPE CENTERS

AN ACT Relating to the department of social and health services' authority with regard to semi-secure and secure crisis residential centers and HOPE centers; and amending RCW 74.13.032, 74.15.220, and 74.15.255.

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

Sec. 1. RCW 74.13.032 and 2009 c 520 s 53 are each amended to read as follows:

(1) The department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to performance-based contracts with licensed private group care facilities.

(4) The department is authorized to allow contracting entities to include a combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030 and/or HOPE centers pursuant to RCW 74.15.220 in the same building or structure. The department shall permit the colocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure.

(5) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

~~((5))~~ (6) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

~~((6))~~ (7) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility.

Sec. 2. RCW 74.15.220 and 1999 c 267 s 12 are each amended to read as follows:

The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

- (1) A license issued by the secretary;
- (2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:
 - (a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;
 - (b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;
 - (c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;
 - (d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;
 - (e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(4) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall ~~((only))~~ award contracts for the operation of HOPE center beds and responsible living skills programs ~~((in departmental regions: (a) With operating secure crisis residential centers; or (b) in which the secretary finds significant progress is made toward opening a secure crisis residential center))~~ with the goal of facilitating the coordination of services provided for youth by such programs and those services provided by secure and semi-secure crisis residential centers.

Sec. 3. RCW 74.15.255 and 2010 c 289 s 10 are each amended to read as follows:

(1)(a) Within available funds appropriated for this purpose, the department shall contract for a continuum of short-term stabilization services pursuant to RCW 13.32A.030 and 74.15.220. The department shall collaborate with service providers in a manner that allows secure and semi-secure crisis residential centers and HOPE centers to be located in a geographically representative manner and to facilitate the coordination of services provided for youth by such programs. To achieve efficiencies and increase utilization, the department shall allow the colocation of these centers in the same building or structure, except

that a youth may not be placed in a secure facility or the secure portion of a colocated facility except as specifically authorized by chapter 13.32A RCW. The department shall allow the colocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(b) The department shall adopt rules to allow the licensing of colocated facilities that include any combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030, or HOPE centers as defined in RCW 74.15.020. Such rules may provide for flexible payment structures, center specific licensing waivers, or other appropriate methods to increase utilization and provide flexibility, while continuing to meet the statutory goals of the programs. The rules shall provide that a condition of being licensed as a colocated facility is that the contracting entity must designate a particular number of beds in the colocated facility to each type of center that is located within the building or structure. The beds so designated must be used only to serve the eligible youth in the program or center for which they are designated.

(2) The department shall require that to be licensed or continue to be licensed as a secure or semi-secure crisis residential center or HOPE center that the center has on staff, or otherwise has access to, a person who has been trained to work with the needs of sexually exploited children. For purposes of this ~~(section)~~ subsection, "sexually exploited child" means that person as defined in RCW 13.32A.030(17).

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 241

[Substitute House Bill 1874]

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN—INVESTIGATIONS

AN ACT Relating to police investigations of commercial sexual exploitation of children and human trafficking; amending RCW 9.73.230 and 9.73.210; reenacting and amending RCW 9.68A.110; 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 increasing incidents of commercial sexual exploitation of children in our state, and further protection of victims require giving law enforcement agencies the tool to have a unified victim-centered police investigation approach to further protect victims by ensuring their safety by prosecuting traffickers. The one-party consent provision permitted for drug trafficking investigation passed in the comprehensive bill to facilitate police investigation and prosecution of drug trafficking crimes is a helpful tool to this end. The legislature also finds that exceptions should be allowed for minors employed for investigation when the minor is a victim and involves only electronic communication with the defendant.

Sec. 2. RCW 9.73.230 and 2005 c 282 s 17 are each amended to read as follows:

(1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves:

(i) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(ii) A party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection

(2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization(~~(, but not of the evidence,))~~) and shall make a determination whether the requirements of subsection (1) of this section were met. Evidence obtained as a result of the interception, transmission, or recording need not be submitted to the court. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section provided that, if the confidential informant was a minor at the time of the recording or an alleged victim of commercial child sexual abuse under RCW 9.68A.100 through 9.68A.102 or 9.40.100, no such notice shall be given.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section.

Sec. 3. RCW 9.73.210 and 1989 c 271 s 202 are each amended to read as follows:

(1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning:

(a) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(b) Person(s) engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4)(b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation.

Sec. 4. RCW 9.68A.110 and 2010 c 289 s 17 and 2010 c 227 s 8 are each reenacted and amended to read as follows:

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher ~~((learning))~~ education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

~~((e))~~ (7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

NEW SECTION. Sec. 5. This act takes effect August 1, 2011.

Passed by the House April 21, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 242

[Engrossed Substitute House Bill 1922]

WEIGH STATIONS—REQUIREMENTS TO STOP

AN ACT Relating to requiring certain vehicles to stop at a weigh station for inspection and weight measurement; adding a new section to chapter 46.44 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 46.44 RCW to read as follows:

(1) Upon entering the state, any vehicle or combination of vehicles with a gross vehicle weight rating of more than forty thousand pounds and transporting cattle must immediately stop at a port of entry, which is operated by the Washington state patrol.

(2) The requirement of subsection (1) of this section does not apply to the operator of a vehicle in possession of a pasture permit or cattle consigned to a public auction or sales yard. Nothing in this subsection shall be construed to authorize a vehicle to bypass an open weigh station or port of entry.

(3) Operation of any vehicle or combination of vehicles in violation of this section is prima facie evidence that the owner of the vehicle or combination of vehicles caused or permitted the vehicle or combination of vehicles to be so operated, and the owner is liable for any penalties imposed under this section.

(4) The penalty for failure to comply with this section is one thousand dollars. All fines collected under this section must be deposited in the motor vehicle fund established under RCW 46.68.070 to be used for road maintenance purposes.

(5) The requirements and penalties in this section apply only in a county located east of the crest of the Cascade mountains with a population of at least four hundred fifty thousand and an adjacent county with a population of at least thirteen thousand but less than fifteen thousand.

(6) The Washington state patrol must provide a one-time written notification of the requirements of this section to affected carriers known to have previously entered the state of Washington in the counties described in subsection (5) of this section. The notification requirement is not a defense for a driver from enforcement action if found in violation of this section. Notification must be provided by August 1, 2011.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 3, 2011.
Filed in Office of Secretary of State May 4, 2011.

CHAPTER 243

[Substitute House Bill 1933]

COLLECTOR VEHICLE LICENSE PLATES

AN ACT Relating to certain collector vehicle license plate provisions; amending RCW 46.18.220; adding a new section to chapter 46.18 RCW; prescribing penalties; and providing effective dates.

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

Sec. 1. RCW 46.18.220 and 2010 c 161 s 617 are each amended to read as follows:

(1) A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a collector vehicle license plate for a motor vehicle that is at least thirty years old. The motor vehicle must be operated primarily as a collector vehicle and be in good running order. The applicant for the collector vehicle license plate shall:

(a) Purchase a registration for the motor vehicle as required under chapters ~~((46.16))~~ 46.16A and 46.17 RCW; and

(b) Pay the special license plate fee established under RCW 46.17.220(1)(d), in addition to any other fees or taxes required by law.

(2) A person applying for a collector vehicle license plate may:

(a) Receive a collector vehicle license plate assigned by the department; or

(b) Provide ~~((a))~~ an actual Washington state issued license plate designated for general use in the year of the vehicle's manufacture.

(3) Collector vehicle license plates:

(a) Are valid for the life of the motor vehicle;

(b) Are not required to be renewed; and

(c) Must be displayed on the rear of the motor vehicle.

(4) A collector vehicle registered under this section may only be used for participation in club activities, exhibitions, tours, parades, and occasional pleasure driving.

(5) Collector vehicle license plates under subsection (2)(b) of this section may be transferred from one motor vehicle to another motor vehicle described in subsection (1) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director.

(6) Any person who knowingly provides a false or facsimile license plate under subsection (2)(b) of this section is subject to a traffic infraction and fine in an amount equal to the monetary penalty for a violation of RCW 46.16A.200(7)(b). Additionally, the person must pay for the cost of a collector vehicle license plate as listed in RCW 46.17.220(1)(d), unless already paid.

NEW SECTION. Sec. 2. A new section is added to chapter 46.18 RCW to read as follows:

The department must provide a method by which law enforcement officers may readily access vehicle information for collector vehicles by using the collector vehicle license plate number. In the event duplicate license plate numbers have been issued to more than one collector vehicle, the department

must provide a method for law enforcement officers to identify the correct vehicle.

NEW SECTION. Sec. 3. Section 1 of this act takes effect August 1, 2011.

NEW SECTION. Sec. 4. Section 2 of this act takes effect January 1, 2012.

Passed by the House April 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 244

[Substitute Senate Bill 5023]

NONLEGAL IMMIGRATION-RELATED SERVICES

AN ACT Relating to nonlegal immigration-related services; amending RCW 19.154.010, 19.154.020, 19.154.060, 19.154.090, 42.44.030, and 19.154.900; adding new sections to chapter 19.154 RCW; creating a new section; repealing RCW 19.154.030, 19.154.040, 19.154.050, 19.154.070, 19.154.080, and 19.154.902; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 19.154.010 and 1989 c 117 s 1 are each amended to read as follows:

The legislature finds and declares that ~~((assisting persons regarding immigration matters))~~ the practice by nonlawyers and other unauthorized persons of providing legal advice and legal services to others in immigration matters substantially affects the public interest. The practice~~((s))~~ of ~~((immigration assistants have a significant impact on the residents of the state of Washington))~~ nonlawyers and other unauthorized persons providing immigration-related legal advice and legal services for compensation may impact the ability of their customers to reside and work within the United States and to establish and maintain stable families and business relationships. The legislature further finds and declares that the previous scheme for regulating the behavior of nonlawyers and other unauthorized persons who provide immigration-related services is inadequate to address the level of unfair and deceptive practices that exists in the marketplace and often contributes to the unauthorized practice of law. It is the intent of the legislature, through this act, to ~~((establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence))~~ prohibit nonlawyers and other unauthorized persons from providing immigration-related services that constitute the practice of law.

Sec. 2. RCW 19.154.020 and 1989 c 117 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) ~~((“Immigration assistant” means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:~~

~~(a) Transcribing responses to a government agency form selected by the customer which is related to an immigration matter, but does not include advising a person as to his or her answers on those forms;~~

~~(b) Translating a person's answer to questions posed on those forms;~~

~~(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;~~

~~(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.~~

~~(2)) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person ((which arises)) arising under immigration and naturalization law, executive order, or presidential proclamation, or ((which arises under)) pursuant to any action of the United States citizenship and immigration ((and naturalization)) services, the United States department of labor, ((or)) the United States department of state, the United States department of justice, the United States department of homeland security, the board of immigration appeals, or any other entity or agency having jurisdiction over immigration law.~~

~~((3))~~ (2) "Compensation" means money, property, or anything else of value.

(3) "Practice of law" has the definition given to it by the supreme court of Washington whether by rule or decision, and includes all exceptions and exclusions to that definition currently in place or hereafter created, whether by rule or decision.

Sec. 3. RCW 19.154.060 and 1989 c 117 s 6 are each amended to read as follows:

~~((Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in RCW 19.154.020.))~~ (1) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the practice of law in an immigration matter for compensation.

(2) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, for compensation:

(a) Advising or assisting another person in determining the person's legal or illegal status for the purpose of an immigration matter;

(b) Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

(c) Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

(d) Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

(e) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(f) Charging a fee for referring another to a person licensed to practice law;

(g) Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.

(3) Persons, other than those holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or

represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, regardless of whether compensation is sought:

(a) Representing, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law;

(b) Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(4)(a) The prohibitions of subsections (1) through (3) of this section shall not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter.

(b) This section does not prohibit a person from offering translation services, regardless of whether compensation is sought. Translating words contained on a government form from English to another language and translating a person's words from another language to English does not constitute the unauthorized practice of law.

(5) In addition to complying with the prohibitions of subsections (1) through (3) of this section, persons licensed as a notary public under chapter 42.44 RCW who do not hold an active license to practice law issued by the Washington state bar association shall not use the term notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the areas of immigration law, when advertising notary public services in the conduct of their business. A violation of any provision of this chapter by a person licensed as a notary public under chapter 42.44 RCW shall constitute unprofessional conduct under the uniform regulation of business and professions act, chapter 18.235 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 19.154 RCW to read as follows:

Persons who are not licensed to practice law in this state or who are not otherwise permitted to represent others under federal law in an immigration matter may engage in the following services for compensation:

(1) Translate words on a government form that the person seeking services presents to the person providing translation services;

(2) Secure existing documents for the person seeking services. Existing documents include, for example, birth and marriage certificates; and

(3) Offer other immigration related services that are not prohibited under this chapter or any other provision of law or do not constitute the practice of law.

Sec. 5. RCW 19.154.090 and 1989 c 117 s 9 are each amended to read as follows:

(1) The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020.

(2) In addition to all remedies available in chapter 19.86 RCW, a person injured by a violation of this chapter may bring a civil action to recover the actual damages proximately caused by a violation of this chapter, or one thousand dollars, whichever is greater.

Sec. 6. RCW 42.44.030 and 2002 c 86 s 287 are each amended to read as follows:

(1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may deny appointment as a notary public to any person based on the following conduct, acts, or conditions:

~~((+))~~ (a) Has had disciplinary action taken against any professional license in this or any other state; ~~((+))~~

~~((+))~~ (b) Has engaged in official misconduct as defined in RCW 42.44.160(1), whether or not criminal penalties resulted; or

(c) Has violated any of the provisions of chapter 19.154 RCW.

(2) The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington.

NEW SECTION. Sec. 7. A new section is added to chapter 19.154 RCW to read as follows:

Nothing in this chapter shall apply to or regulate any business to the extent such regulation is prohibited or preempted by federal law.

Sec. 8. RCW 19.154.900 and 1989 c 117 s 11 are each amended to read as follows:

This chapter shall be known and cited as the "immigration ~~((assistant practices))~~ services fraud prevention act."

NEW SECTION. Sec. 9. (1)(a) The legislature recognizes that immigrants in Washington need legal services to assist them in immigration matters, and it is difficult for existing organizations to meet those needs because of high case loads and limited resources.

(b) The legislature also recognizes that the difference between offering nonlegal services and offering legal services in immigration matters is sometimes difficult to distinguish. Not understanding or recognizing the distinction between nonlegal services and legal services in immigration matters can result in a person engaging in the unauthorized practice of law and can result in irreparable consequences for immigrants who seek assistance.

(2) Therefore, the legislature respectfully requests that the supreme court's practice of law board, within available resources, evaluate the following:

(a) The specific services nonattorneys may provide to immigrants that do not rise to the level of the practice of law in immigration matters;

(b) The level of access to and the quality of nonlegal and legal services immigrants have and the ways in which access and quality can be improved;

(c) The level of need immigrants have for nonlegal services compared to the need for legal services in immigration matters.

(3) A report of the board's findings and recommendations must be presented to the legislature no later than December 1, 2011.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 19.154.030 (Exemptions) and 1989 c 117 s 3;
- (2) RCW 19.154.040 (Registration required) and 1989 c 117 s 4;
- (3) RCW 19.154.050 (Change of address) and 1989 c 117 s 5;
- (4) RCW 19.154.070 (Written contract—Requirements—Right to rescind) and 1989 c 117 s 7;
- (5) RCW 19.154.080 (Prohibited activities) and 1989 c 117 s 8; and
- (6) RCW 19.154.902 (Effective date—1989 c 117) and 1989 c 117 s 15.

NEW SECTION. Sec. 11. This act takes effect one hundred eighty days after final adjournment of the legislative session in which it is enacted.

Passed by the Senate April 21, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 245

[Substitute Senate Bill 5072]

DEPARTMENT OF AGRICULTURE—GIFTS

AN ACT Relating to the authority of the department of agriculture to accept and expend gifts; and adding a new section to chapter 43.23 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.23 RCW to read as follows:

The director of the department may accept, expend, and retain gifts, grants, bequests, or contributions from public or private sources to carry out the purposes and programs of the department.

Passed by the Senate April 15, 2011.

Passed by the House April 11, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 246

[Senate Bill 5141]

MOTORCYCLE INSTRUCTION PERMITS—ISSUANCE

AN ACT Relating to limiting the issuance of motorcycle instruction permits; and amending RCW 46.20.510.

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

Sec. 1. RCW 46.20.510 and 2002 c 352 s 17 are each amended to read as follows:

(1) **Motorcycle instruction permit.** A person holding a valid driver's license who wishes to learn to ride a motorcycle may apply for a motorcycle instruction permit. The department may issue a motorcycle instruction permit

after the applicant has successfully passed all parts of the motorcycle examination other than the driving test. The director shall collect a fee of fifteen dollars for the motorcycle instruction permit or renewal, and deposit the fee in the motorcycle safety education account of the highway safety fund.

(2) **Effect of motorcycle instruction permit.** A person holding a motorcycle instruction permit may drive a motorcycle upon the public highways if the person has immediate possession of the permit and a valid driver's license. An individual with a motorcyclist's instruction permit may not carry passengers and may not operate a motorcycle during the hours of darkness.

(3) **Term of motorcycle instruction permit.** A motorcycle instruction permit is valid for ninety days from the date of issue.

(a) The department may issue one additional ninety-day permit.

(b) The department may issue a third motorcycle instruction permit ~~((if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency))~~ upon presentation of documented evidence that the permittee is enrolled in a motorcycle skills education program as authorized in RCW 46.81A.020 with a class start date prior to the expiration of the third permit. The department may not issue more than three motorcycle instruction permits to an applicant within a five-year period.

Passed by the Senate April 15, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 247

[Substitute Senate Bill 5271]

VESSELS—ABANDONED OR DERELICT

AN ACT Relating to abandoned or derelict vessels; amending RCW 79.100.110, 79.100.130, 53.08.320, and 79.100.030; and prescribing penalties.

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

Sec. 1. RCW 79.100.110 and 2006 c 153 s 1 are each amended to read as follows:

(1) A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

(2) A person who intentionally, through action or inaction and without the appropriate state, local, or federal authorization, causes a vessel to sink, break up, or block a navigational channel upon aquatic lands is guilty of a misdemeanor.

Sec. 2. RCW 79.100.130 and 2007 c 342 s 3 are each amended to read as follows:

A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. The local government shall serve as the authorized public entity for the removal of the derelict or abandoned vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government

during the removal of the derelict or abandoned vessel. Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6).

Sec. 3. RCW 53.08.320 and 2002 c 286 s 23 are each amended to read as follows:

A moorage facility operator may adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The rules may also establish procedures for the enforcement of these rules by port district, city, county, metropolitan park district or town personnel. The rules shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of ~~((seventy five))~~ ninety percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his or her last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as prescribed by this subsection (5). Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel.

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility

operator within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times.

Sec. 4. RCW 79.100.030 and 2002 c 286 s 4 are each amended to read as follows:

(1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. An authorized public entity, in the good faith performance of the actions authorized under this chapter, is not liable for civil damages resulting from any act or omission in the performance of the actions other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person whose assistance has been requested by an authorized public entity, who has entered into a written agreement pursuant to RCW 79.100.070, and who, in good faith, renders assistance or advice with respect to activities conducted by an authorized public entity pursuant to this chapter, is not liable for civil damages resulting from any act or omission in the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

Passed by the Senate April 21, 2011.
Passed by the House April 1, 2011.
Approved by the Governor May 3, 2011.
Filed in Office of Secretary of State May 4, 2011.

CHAPTER 248

[Substitute Senate Bill 5436]

RECREATIONAL WATER VESSELS—ANTIFOULING PAINTS

AN ACT Relating to the use of antifouling paints on recreational water vessels; adding a new chapter to Title 70 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature intends to phase out the use of copper-based antifouling paints used on recreational water vessels.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department of ecology.

(3)(a) "Recreational water vessel" means any vessel that is no more than sixty-five feet in length and is: (i) Manufactured or used primarily for pleasure; or (ii) leased, rented, or chartered by a person for the pleasure of that person.

(b) "Recreational water vessel" does not include a vessel that is subject to United States coast guard inspection and that: (i) Is engaged in commercial use; or (ii) carries paying passengers.

NEW SECTION. Sec. 3. (1) Beginning January 1, 2018, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale in this state any new recreational water vessel manufactured on or after January 1, 2018, with antifouling paint containing copper.

(2) Beginning January 1, 2020, no antifouling paint that is intended for use on a recreational water vessel and that contains more than 0.5 percent copper may be offered for sale in this state.

(3) Beginning January 1, 2020, no antifouling paint containing more than 0.5 percent copper may be applied to a recreational water vessel in this state.

NEW SECTION. Sec. 4. The department, in consultation and cooperation with other state natural resources agencies, must increase educational efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species. This effort must include a review of best practices that consider the type of antifouling paint used and recommendations regarding appropriate hull cleaning that includes in-water methods.

NEW SECTION. Sec. 5. (1) The department shall enforce the requirements of this chapter.

(2)(a) A person or entity that violates this chapter is subject to a civil penalty. The department may assess and collect a civil penalty of up to ten thousand dollars per day per violation.

(b) All penalties collected by the department under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070.

NEW SECTION. Sec. 6. (1) On or after January 1, 2016, the director may establish and maintain a statewide advisory committee to assist the department in implementing the requirements of this chapter.

(2)(a) By January 1, 2017, the department shall survey the manufacturers of antifouling paints sold or offered for sale in this state to determine the types of antifouling paints that are available in this state. The department shall also study how antifouling paints affect marine organisms and water quality. The department shall report its findings to the legislature, consistent with RCW 43.01.036, by December 31, 2017.

(b) If the statewide advisory committee authorized under subsection (1) of this section is established by the director, the department may consult with the statewide advisory committee to prepare the report required under (a) of this subsection.

NEW SECTION. Sec. 7. The department may adopt rules as necessary to implement this chapter.

NEW SECTION. Sec. 8. Sections 2 through 7 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 9. 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 by the Senate April 18, 2011.

Passed by the House April 6, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 249

[Senate Bill 5500]

STATE ECONOMIC POLICY—RULE-MAKING PROCESS

AN ACT Relating to the rule-making process for state economic policy; and amending RCW 43.21H.020, 19.85.030, and 19.85.070.

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

Sec. 1. RCW 43.21H.020 and 1975-'76 2nd ex.s. c 117 s 2 are each amended to read as follows:

The legislature finds that agency and local government decisions can have negative economic consequences for businesses, particularly small businesses, as well as for employees of those businesses. All state agencies and local government entities with rule-making authority under state law or local ordinance (~~shall~~) must adopt methods and procedures which will insure that economic impacts and values will be given appropriate consideration in the rule-making process along with environmental, social, health, and safety considerations.

Sec. 2. RCW 19.85.030 and 2007 c 239 s 3 are each amended to read as follows:

(1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: ~~((+))~~ (i) If the proposed rule will impose more than minor costs on businesses in an industry; or ~~((+))~~

(ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

(b) An agency (~~shall~~) must prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency (~~shall~~) must provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. (~~Methods to reduce the costs on small businesses may include~~) The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

(3) If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency (~~shall~~) must provide a clear explanation of why it has made that determination and include that statement with its filing of the proposed rule pursuant to RCW 34.05.320.

(4)(a) All small business economic impact statements are subject to selective review by the joint administrative rules review committee pursuant to RCW 34.05.630.

(b) Any person affected by a proposed rule where there is (~~not~~) a small business economic impact statement may petition the joint administrative rules review committee for review pursuant to the procedure in RCW 34.05.655.

Sec. 3. RCW 19.85.070 and 1992 c 197 s 1 are each amended to read as follows:

When any rule is proposed for which a small business economic impact statement is required, the adopting agency (~~shall~~) must provide notice to small businesses of the proposed rule through (~~any of the following~~):

- (1) Direct notification of known interested small businesses or trade organizations affected by the proposed rule; (~~or~~)
- (2) Providing information of the proposed rule making to publications likely to be obtained by small businesses of the types affected by the proposed rule; and

(3) Posting on the agency web site.

Passed by the Senate February 24, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 250

[Substitute Senate Bill 5784]

OCEAN AND COASTAL RESOURCE MANAGEMENT—ENHANCEMENT

AN ACT Relating to advancing the regional ocean partnership; amending RCW 43.372.070; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the states of Washington, Oregon, and California have a common interest in the management and protection of ocean and coastal resources. This common interest stems from the many ocean and coastal resources that cross jurisdictional boundaries including winds, currents, fish, and wildlife, as well as the multijurisdictional reach of many uses of marine waters. These shared resources provide enormous economic, environmental, and social benefits to the states, and are an integral part of maintaining the high quality of life enjoyed by residents of the west coast.

(2) The legislature finds that the shared nature of ocean and coastal resources make coordination between the states of Washington, Oregon, and California essential in order to achieve effective ocean and coastal resource management and support sustainable coastal communities.

(3) The legislature recognizes the west coast governor's agreement on ocean health, entered into on September 18, 2006, as an important step towards achieving more coordinated management of these ocean and coastal resources.

(4) Ocean and coastal resource planning processes and funding opportunities recently initiated by the federal government contemplate action at the regional level. Early action on the part of Washington, Oregon, and California to collaboratively define and implement such planning efforts and projects will increase the states' ability to determine the course of federal planning processes for the west coast and receive nonstate support for the planning efforts, resource preservation and restoration projects, and projects to support ocean health and sustainable coastal communities.

(5) Therefore, collaboration on ocean and coastal resource management between Washington, Oregon, and California should be continued and enhanced through the respective legislatures, as well as through the respective executive branches through the west coast governor's agreement on ocean health.

Sec. 2. RCW 43.372.070 and 2010 c 145 s 10 are each amended to read as follows:

(1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the

account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, implementation of the marine management plan, and for the restoration or enhancement of marine habitat or resources.

(3) When moneys are deposited into the marine resources stewardship trust account, the governor must provide recommendations on expenditures from the account to the appropriate committees of the legislature prior to the next regular legislative session. The recommended projects and activities must be consistent with:

(a) The allowable uses of the marine resources stewardship trust account; and

(b) The priority areas identified in the west coast governor's agreement on ocean health, entered into on September 18, 2006, and recognized in section 1 of this act.

Passed by the Senate April 19, 2011.

Passed by the House April 5, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.

CHAPTER 251

[House Bill 1290]

HEALTH CARE EMPLOYEES—MANDATORY OVERTIME—PROHIBITION

AN ACT Relating to the prohibition on mandatory overtime for certain health care employees; amending RCW 49.28.130; and creating a new section.

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

Sec. 1. RCW 49.28.130 and 2002 c 112 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 unless the context clearly requires otherwise.

(1) "Employee" means a licensed practical nurse or a registered nurse licensed under chapter 18.79 RCW employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation, ~~the state ((institution)),~~ a political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3)(a) "Health care facility" means the following facilities, or any part of the facility, including such facilities if owned and operated by a political subdivision or instrumentality of the state, that operate~~(s)~~ on a twenty-four hours per day, seven days per week basis:

(i) Hospices licensed under chapter 70.127 RCW~~((;))~~;

(ii) Hospitals licensed under chapter 70.41 RCW~~((;))~~;

(iii) Rural health care facilities as defined in RCW 70.175.020~~((; and))~~;

~~(iv) Psychiatric hospitals licensed under chapter 71.12 RCW (and includes such facilities if owned and operated by a political subdivision or instrumentality of the state); or~~

(v) Facilities owned and operated by the department of corrections or by a governing unit as defined in RCW 70.48.020 in a correctional institution as defined in RCW 9.94.049 that provide health care services to inmates as defined in RCW 72.09.015.

(b) If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2011, in the omnibus appropriations act, this act is null and void.

Passed by the House April 13, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 252

[Engrossed Senate Bill 5907]

PRISON SAFETY—POLICY RECOMMENDATIONS

AN ACT Relating to implementing the policy recommendations resulting from the national institute of corrections review of prison safety; adding new sections to chapter 72.09 RCW; 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 the legislature to promote safe state correctional facilities. Following the tragic murder of officer Jayme Biendl, the governor and department of corrections requested the national institute of corrections to review safety procedures at the Monroe reformatory. While the report found the Monroe reformatory is a safe institution, it recommends changes that would enhance safety. The legislature recognizes that operating safe institutions requires ongoing efforts to address areas where improvements can be made to enhance the safety of state correctional facilities. This act addresses ways to increase safety at state correctional facilities and implements changes recommended in the report of the national institute of corrections.

NEW SECTION. Sec. 2. (1) The department shall establish a statewide security advisory committee to conduct comprehensive reviews of the department's total confinement security-related policies and procedures.

(2) The statewide security advisory committee shall make recommendations to the secretary regarding methods to provide consistent application of the policies and procedures regarding security issues in total confinement correctional facilities.

(3) The statewide security advisory committee shall include a balance of institutional staff including, but not limited to, custody staff. At a minimum, the statewide security advisory committee shall include:

(a) The director of prisons or his or her designee;

(b) A nonsupervisory classified employee and/or sergeant from each local advisory committee of a major facility and one nonsupervisory classified employee and/or sergeant representative from a minimum facility;

(c) A senior-ranking security custody staff member from each major correctional facility and a senior-ranking custody staff member from a minimum correctional facility;

(d) A senior-ranking community corrections officer; and

(e) A delegate from the union that represents department employees located at correctional facilities.

(4) The statewide security advisory committee shall develop guidelines to establish local security advisory committees for each total confinement correctional facility within the department. The chair of each local security advisory committee shall be the captain at a major facility and the lieutenant at a minimum security facility. The local security advisory committee should consist of a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as medical staff, class counselors, program staff, and mental health staff.

(5) The department shall report back to the governor and appropriate committees of the legislature by November 1, 2011, and annually thereafter. The report shall include:

(a) Recommendations raised by both the statewide and local security advisory committees;

(b) Recommendations, if any, for improving the ability of nonsupervisory classified employees to provide input on safety concerns including labor and industries mandated safety committees and the inclusion of safety issues in collective bargaining;

(c) Actions taken by the department as a result of recommendations by the statewide and local security advisory committees; and

(d) Recommendations for additional resources or legislation to address security concerns in total confinement correctional facilities.

(6) The department shall report back to the governor and the appropriate committees of the legislature by November 1, 2011, on issues related to safety within community corrections. The department shall engage employees from all levels of the community corrections division in preparing the report.

NEW SECTION. Sec. 3. (1) The department shall establish multidisciplinary teams at each total confinement correctional facility that will evaluate offenders' placements in inmate job assignments and custody promotions. The teams at each facility shall determine suitable placements based on the offender's risk, behavior, or other factors considered by the team.

(2) At a minimum, each team shall have representation from a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as medical staff, class counselors, program staff, and mental health staff.

NEW SECTION. Sec. 4. (1) The department shall develop training curriculum regarding staff safety issues at total confinement correctional facilities. At a minimum, the training shall address the following issues:

- (a) Security routines;
- (b) Physical plant layout;
- (c) Offender movement and program area coverage; and
- (d) Situational awareness and de-escalation techniques.

(2) The department shall seek the input of both the statewide security and local advisory committees in developing the curriculum.

(3) The department shall deliver such training to applicable correctional staff at in-service training by July 1, 2012.

NEW SECTION. Sec. 5. (1) The department may pilot the use of body alarms and proximity cards within available resources.

(2) The department shall hire a consultant to study the feasibility of implementing a statewide system for staff safety, utilizing body alarms and proximity cards for staff within the department's total confinement correctional facilities and report findings and recommendations to the governor and appropriate committees of the legislature by November 1, 2011. At a minimum, the report shall include:

- (a) Recommendations for the use of body alarms by security level;
- (b) Recommendations for specific positions that should require the use of body alarms;
- (c) The information technological and infrastructure requirements needed for body alarms and proximity cards;
- (d) The training requirements for body alarms;
- (e) Lessons learned from any pilot project the department may implement in the interim;
- (f) The estimated cost of the alarms and proximity cards and needed supporting infrastructure, staffing, and training requirements.

(3) The consultant shall seek the input of both the statewide and local security advisory committees in preparing his or her report.

NEW SECTION. Sec. 6. (1) The department shall hire a consultant to study the deployment of video monitoring cameras within the department to make recommendations regarding statewide standards for the positioning and use of video monitoring cameras in total confinement correctional facilities and report findings and recommendations to the governor and appropriate committees of the legislature by November 1, 2011. At a minimum, the report shall include:

(a) Recommendations for the use of video monitoring cameras by security level;

(b) Recommendations for specific locations within a total confinement correctional facility which would benefit from the use of video monitoring cameras;

(c) The information technological and infrastructure requirements needed for effective use of video monitoring cameras;

(d) Recommendations for how video monitoring cameras would best be deployed in current total confinement correctional facilities;

(e) Recommendations about how video monitoring cameras should be incorporated into future prison construction to insure consistency in camera use system-wide;

(f) The estimated cost of the video monitoring cameras, supporting infrastructure needed, and staffing required by the total confinement correctional facility.

(2) The consultant shall seek the input of both the statewide and local security advisory committees in preparing his or her report.

NEW SECTION. Sec. 7. (1) The department shall develop a comprehensive plan for the use of oleoresin capsicum aerosol products, commonly referred to as pepper spray, as a security measure available for staff at total confinement correctional facilities.

(2) The department may initiate a pilot project, within available funds, to expand the deployment of oleoresin capsicum aerosol products within total confinement correctional facilities.

(3) The department's plan for the deployment of oleoresin capsicum aerosol products to staff shall include findings, if any, from the pilot project, recommendations regarding which facility's use should be limited to, what the training requirements should be, the estimated costs, and an implementation schedule.

(4) The department shall seek the input of both the statewide and local security advisory committees in developing its plan.

(5) The department shall report its plan, including costs, to the governor and appropriate committees of the legislature by November 1, 2011.

NEW SECTION. Sec. 8. Sections 2 through 7 of this act are each added to chapter 72.09 RCW.

Passed by the Senate April 9, 2011.

Passed by the House April 19, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 253

[House Bill 1419]

BACKGROUND CHECKS—DEPARTMENTS OF EARLY LEARNING
AND SOCIAL AND HEALTH SERVICES

AN ACT Relating to allowing the department of early learning and the department of social and health services to share background check information; and amending RCW 43.20A.710, 43.43.837, 43.215.200, 43.215.215, 43.43.830, and 43.43.832.

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

Sec. 1. RCW 43.20A.710 and 2009 c 580 s 5 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) ~~((The investigation may include an examination of state and national criminal identification data.))~~ The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of ((these)) the applicant((s)).

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background

check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

Sec. 2. RCW 43.43.837 and 2009 c 580 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(3) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

~~((4))~~ (5) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

~~((5))~~ (6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

~~((6))~~ (7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

~~((7))~~ (8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

~~((8))~~ (9) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their

applicants unless the individual is determined to be disqualified due to the background information.

~~((9))~~ (10) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

~~((10))~~ (11) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

- (i) Applying for a license or certification from the department;
- (ii) Seeking a contract with the department or a service provider;
- (iii) Applying for employment, promotion, reallocation, or transfer;
- (iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

- (i) Conduct licensing, certification, or contracting activities;
- (ii) Have unsupervised access to vulnerable adults, juveniles, and children;
- (iii) Receive payments from a department program; or
- (iv) Work or serve in a department-covered position.

(c) "Department" means the department of social and health services.

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW.

Sec. 3. RCW 43.215.200 and 2007 c 415 s 3 are each amended to read as follows:

It shall be the director's duty with regard to licensing:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and

other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(3) In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care;

(4) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(5) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care that an agency is authorized to render and the ages and number of children to be served;

~~((5))~~ (6) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

~~((6))~~ (7) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

~~((7))~~ (8) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and

~~((8))~~ (9) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children.

Sec. 4. RCW 43.215.215 and 2007 c 415 s 5 are each amended to read as follows:

(1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b) The fingerprint criminal history record checks shall be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record.

(c) The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose.

(3) To satisfy the shared background check requirements of the department of early learning and the department of social and health services, each department shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

Sec. 5. RCW 43.43.830 and 2007 c 387 s 9 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 43.43.845.

(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;

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

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(2) "Business or organization" means a person, 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, or that provides child day care, early learning, or early learning childhood education services, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding

of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and 10.97.050 relating to a crime 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 kidnapping; 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; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; (~~patronizing a juvenile prostitute~~) commercial sexual abuse of a minor; 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.

(8) "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.

With regard to peer counselors, "unsupervised" does not include incidental contact with children under age sixteen at the location at which the peer counseling is taking place. "Incidental contact" means minor or casual contact with a child in an area accessible to and within visual or auditory range of others. It could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office.

(9) "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) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services.

(12) "Peer counselor" means a nonprofessional person who has equal standing with another person, providing advice on a topic about which the nonprofessional person is more experienced or knowledgeable, and who is a counselor for a peer counseling program that contracts with or is otherwise approved by the department, another state or local agency, or the court.

Sec. 6. RCW 43.43.832 and 2007 c 387 s 10 are each amended to read as follows:

(1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol identification and criminal history section shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's conviction record as defined in chapter 10.97 RCW.

(2) The legislature also finds that the Washington professional educator standards board may request of the Washington state patrol criminal identification system information regarding a certificate applicant's conviction record under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information listed in subsection (1) of this section,

and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, ~~((18.48,))~~ 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) The director of the department of early learning shall investigate the conviction records, pending charges, and other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(6) The director of the department of early learning shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers,

contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

(7) 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 pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(8)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 254

[Substitute House Bill 1008]

CITIZEN'S COMMISSION ON SALARIES FOR ELECTED OFFICIALS—MEMBERSHIP

AN ACT Relating to membership on the Washington citizens' commission on salaries for elected officials; and amending RCW 43.03.305.

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

Sec. 1. RCW 43.03.305 and 2008 c 6 s 204 are each amended to read as follows:

There is created a commission to be known as the Washington citizens' commission on salaries for elected officials, to consist of ~~((sixteen))~~ members appointed by the governor as provided in this section.

(1) ~~((Nine of the sixteen commission members shall be selected by lot by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to full terms on the commission under subsection (3) of this section. One member shall be selected from each congressional district.))~~ One registered voter from each congressional district shall be selected by the secretary of state from among those registered voters eligible to vote at the time persons are selected for appointment to serve on the commission. The secretary shall establish policies and procedures for conducting the selection by lot. The policies and procedures shall include, but not be limited to, those for notifying persons selected and for providing a new selection from a congressional district if a person selected from the district declines appointment to the commission or if, following the person's appointment, the person's position on the commission becomes vacant before the end of the person's term of office.

(2) ~~((The remaining seven of the sixteen))~~ Seven commission members, all residents of this state, shall be selected jointly by the speaker of the house of representatives and the president of the senate. The persons selected under this subsection shall have had experience in the field of personnel management. Of these seven members, one shall be selected from each of the following five sectors in this state: Private institutions of higher education; business; professional personnel management; legal profession; and organized labor. Of the two remaining members, one shall be a person recommended to the speaker and the president by the chair of the Washington personnel resources board and one shall be a person recommended by majority vote of the presidents of the state's four-year institutions of higher education.

(3) The secretary of state shall forward the names of persons selected under subsection (1) of this section and the speaker of the house of representatives and

president of the senate shall forward the names of persons selected under subsection (2) of this section to the governor who shall appoint these persons to the commission. Except ~~((as provided in subsection (6) of this section, the names of persons selected for appointment to the commission shall be forwarded to the governor not later than February 15, 1987, and not later than the fifteenth day of February every four years through 1999. The terms of the members selected in 1999 shall terminate July 1, 2002, and the names of persons selected for appointment to the commission shall be forwarded to the governor not later than July 1, 2002. Of the sixteen names forwarded to the governor in 2002, the governor shall by lot select four of the persons selected under subsection (1) of this section and four of the persons selected under subsection (2) of this section to serve two-year terms, with the rest of the members serving four-year terms. Thereafter, except))~~ as provided in subsection (6) of this section, all members shall serve four-year terms and the names of ~~((eight))~~ the persons selected for appointment to the commission shall be forwarded to the governor not later than the first day of July every two years.

(4) No person may be appointed to more than two terms. No member of the commission may be removed by the governor during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.

The unexcused absence of any person who is a member of the commission from two consecutive meetings of the commission shall constitute the relinquishment of that person's membership on the commission. Such a relinquishment creates a vacancy in that person's position on the commission. A member's absence may be excused by the chair of the commission upon the member's written request if the chair believes there is just cause for the absence. Such a request must be received by the chair before the meeting for which the absence is to be excused. A member's absence from a meeting of the commission may also be excused during the meeting for which the member is absent by the affirmative vote of a majority of the members of the commission present at the meeting.

(5) No state official, public employee, or lobbyist, or immediate family member of the official, employee, or lobbyist, subject to the registration requirements of chapter 42.17 or 42.17A RCW is eligible for membership on the commission.

As used in this subsection the phrase "immediate family" means the parents, spouse or domestic partner, siblings, children, or dependent relative of the official~~((, employee,))~~ or lobbyist whether or not living in the household of the official~~((, employee,))~~ or lobbyist, and the parent, spouse or domestic partner, sibling, child, or dependent relative of the employee, living in the household of the employee or who is dependent in whole or in part for his or her support upon the earnings of the state employee.

(6)(a) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term. The selection and appointment shall be concluded within thirty days of the date the position becomes vacant and shall be conducted in the same manner as originally provided.

(b) Initial members appointed from congressional districts created after the effective date of this section shall be selected and appointed in the manner

provided in subsection (1) of this section. The selection and appointment must be concluded within ninety days of the date the district is created. The term of an initial member appointed under this subsection terminates July 1st of an even-numbered year so that at no point may the terms of more than one-half plus one of the members selected under subsection (1) of this section terminate in the same year.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 255

[Engrossed Substitute House Bill 1026]

ADVERSE POSSESSION

AN ACT Relating to adverse possession; adding a new section to chapter 7.28 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 7.28 RCW to read as follows:

(1) A party who prevails against the holder of record title at the time an action asserting title to real property by adverse possession was filed, or against a subsequent purchaser from such holder, may be required to:

(a) Reimburse such holder or purchaser for part or all of any taxes or assessments levied on the real property during the period the prevailing party was in possession of the real property in question and which are proven by competent evidence to have been paid by such holder or purchaser; and

(b) Pay to the treasurer of the county in which the real property is located part or all of any taxes or assessments levied on the real property after the filing of the adverse possession claim and which are due and remain unpaid at the time judgment on the claim is entered.

(2) If the court orders reimbursement for taxes or assessments paid or payment of taxes or assessments due under subsection (1) of this section, the court shall determine how to allocate taxes or assessments between the property acquired by adverse possession and the property retained by the title holder. In making its determination, the court shall consider all the facts and shall order such reimbursement or payment as appears equitable and just.

(3) The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just.

NEW SECTION. Sec. 2. This act applies to actions filed on or after July 1, 2012.

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 5, 2011.
Filed in Office of Secretary of State May 6, 2011.

CHAPTER 256

[Substitute House Bill 1061]

ON-SITE WASTEWATER TREATMENT SYSTEMS DESIGNER LICENSING

AN ACT Relating to on-site wastewater treatment systems designer licensing; amending RCW 18.210.020, 18.210.030, 18.210.050, 18.210.080, 18.210.100, 18.210.120, 18.210.140, 18.210.160, 18.210.170, 18.210.180, and 18.210.190; reenacting and amending RCW 18.210.010; and repealing RCW 18.210.090 and 18.210.210.

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

Sec. 1. RCW 18.210.010 and 2010 1st sp.s. c 7 s 76 are each reenacted and amended to read as follows:

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

(1) "Board" means the board of registration for professional engineers and land surveyors as defined in chapter 18.43 RCW.

(2) "Certificate of competency" or "certificate" means a certificate issued to employees of local health jurisdictions indicating that the certificate holder has passed the licensing examination required under this chapter.

(3) "Designer(;)" or "licensee(;)" (~~(or "permit holder")~~) means an individual authorized under this chapter to perform design services for on-site wastewater treatment systems.

(4) "Director" means the director of the Washington state department of licensing.

(5) "Engineer" means a professional engineer licensed under chapter 18.43 RCW.

(6) "License" means a license to design on-site wastewater treatment systems under this chapter.

(7) "Local health jurisdiction" or "jurisdictional health department" means an administrative agency created under chapter 70.05, 70.08, or 70.46 RCW, that administers the regulation and codes regarding on-site wastewater treatment systems.

(8) "On-site wastewater design" means the development of plans, details, specifications, instructions, or inspections by application of specialized knowledge in analysis of soils, on-site wastewater treatment systems, disposal methods, and technologies to create an integrated system of collection, transport, distribution, treatment, and disposal of on-site wastewater.

(9) "On-site wastewater treatment system" means an integrated system of components that: Convey, store, treat, and/or provide subsurface soil treatment and disposal of wastewater effluent on the property where it originates or on adjacent or other property and includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas, for on-site wastewater treatment under three thousand five hundred gallons per day when not connected to a public sewer system.

(10) "Practice of engineering" has the meaning set forth in RCW 18.43.020(5).

~~((11) "Practice permit" means an authorization to practice granted to an individual who designs on-site wastewater treatment systems and who has been authorized by a local health jurisdiction to practice on or before July 1, 2000.))~~

Sec. 2. RCW 18.210.020 and 2002 c 86 s 256 are each amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, and conditions constitute unprofessional conduct:

(1) Practicing with a practice permit or license issued under this chapter that is expired, suspended, or revoked;

(2) Being willfully untruthful or deceptive in any document, report, statement, testimony, or plan that pertains to the design or construction of an on-site wastewater treatment system; ~~((and))~~

(3) Submission of a design or as-built record to a local health jurisdiction, to the department of health, or to the department of ecology, that is knowingly based upon false, incorrect, misleading, or fabricated information; and

(4) Submission of any application for licensure or certification that contains false, fraudulent, or misleading information.

Sec. 3. RCW 18.210.030 and 2002 c 86 s 257 are each amended to read as follows:

The board shall immediately suspend the license ~~((or practice permit))~~ 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. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the child support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this ~~((subsection—[section]))~~ section, and satisfies the requirements of RCW 34.05.422.

Sec. 4. RCW 18.210.050 and 2010 1st sp.s. c 7 s 77 are each amended to read as follows:

The director may:

(1) Employ administrative, clerical, and investigative staff as necessary to administer and enforce this chapter;

(2) Establish fees for applications, examinations, and renewals in accordance with chapter 43.24 RCW;

(3) Issue ~~((practice permits and))~~ licenses to applicants who meet the requirements of this chapter; and

(4) Exercise rule-making authority to implement this section.

Sec. 5. RCW 18.210.080 and 1999 c 263 s 9 are each amended to read as follows:

The director, members of the board, and individuals acting on behalf of the director or the board are immune to liability in any civil action or criminal case based on any acts performed in the course of their duties under this chapter, except for acts displaying intentional or willful misconduct.

Sec. 6. RCW 18.210.100 and 1999 c 263 s 11 are each amended to read as follows:

All applicants for licensure under this chapter, except as provided in RCW 18.210.180, must pass a written examination administered by the board and must also meet the following minimum requirements:

- (1) A high school diploma or equivalent; and
- (2) A minimum of four years of experience, as approved by the board, showing increased responsibility for the design of on-site wastewater treatment systems. The experience ~~((must))~~ should include ~~((, but is not limited to,))~~ site soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices. Completion of ~~((two years of))~~ satisfactory college level course work ~~((in subjects dealing with, but not limited to, soils, hydraulics, topographic delineations, construction practices, and/or microbiology or completion of a two year curriculum in on site treatment systems, technology, and applications, as approved by the board,))~~ or successful participation in a board-approved internship or mentoring program may be substituted for up to two years of the experience requirement.

Sec. 7. RCW 18.210.120 and 1999 c 263 s 13 are each amended to read as follows:

(1) Application for licensure must be on forms prescribed by the board and furnished by the director. The application must contain statements, made under oath, demonstrating the applicant's education and work experience.

(2) Applicants shall provide not less than two verifications of experience ~~((from))~~. Verifications of experience may be provided by licensed professional engineers, licensed on-site wastewater treatment system designers ~~((licensed under this chapter))~~, or state/local regulatory officials in the on-site wastewater treatment field who have direct knowledge of the applicant's qualifications to practice in accordance with this chapter and who can verify the applicant's work experience.

(3) The director, as provided in RCW 43.24.086, shall determine an application fee for licensure as an on-site wastewater treatment system designer. A nonrefundable application fee must accompany the application. The director shall ensure that the application fee includes the cost of the examination and the cost issuance of a license and certificate. A candidate who fails an examination may apply for reexamination. The director shall determine the fee for reexamination.

Sec. 8. RCW 18.210.140 and 1999 c 263 s 15 are each amended to read as follows:

(1) ~~((Practice permits and))~~ Licenses and certificates issued under this chapter are valid for ~~((one year))~~ a period of time as determined by the director and may be renewed under the conditions described in this chapter. An expired ~~((practice permit or))~~ license or certificate is invalid and must be renewed ~~((before lawful practice can resume))~~. Any ~~((permit holder or))~~ licensee or certificate holder who fails to pay the renewal fee within ninety days following the date of expiration shall be assessed a penalty fee as determined by the director and must pay the penalty fee and the base renewal fee before the

~~((practice permit or))~~ license or certificate may be ~~((returned to a valid status))~~ renewed.

(2) Any license ~~((or practice permit))~~ issued under this chapter that is not renewed within two years of its date of expiration must be canceled. Following cancellation, a person seeking to renew must reapply as a new applicant under this chapter.

~~((The director, in conformance with RCW 43.24.140, may modify the duration of the license.))~~ The director, as provided in RCW 43.24.086, shall determine the fee for applications and for renewals of ~~((practice permits and))~~ licenses and certificates issued under this chapter. For determining renewal fees, the pool of licensees and certificate holders under this chapter must be combined with the licensees established in chapter 18.43 RCW.

Sec. 9. RCW 18.210.160 and 2002 c 86 s 259 are each amended to read as follows:

On or after July 1, 2003, it is a gross misdemeanor for any person, not otherwise exempt from the requirements of this chapter, to: (1) Perform on-site wastewater treatment systems design services without a license; (2) purport to be qualified to perform those services without having been issued a ~~((standard))~~ license under this chapter; (3) attempt to use the license or seal of another; (4) attempt to use a revoked or suspended license; or (5) attempt to use false or fraudulent credentials. In addition, action may be taken under RCW 18.235.150.

Sec. 10. RCW 18.210.170 and 1999 c 263 s 18 are each amended to read as follows:

The board shall require licensees ~~((and holders of certificates of competency))~~ under this chapter to ~~((obtain))~~ maintain continuing professional development ~~((or continuing education))~~. The board may ~~((also))~~ require these licensees ~~((and certificate holders))~~ to demonstrate maintenance of knowledge and skills as a condition of license ~~((or certificate))~~ renewal, including peer review of work products and periodic reexamination.

Sec. 11. RCW 18.210.180 and 1999 c 263 s 19 are each amended to read as follows:

Any person holding a license issued by a jurisdiction outside the state of Washington authorizing that person to perform design services for ~~((the construction))~~ site soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices of on-site wastewater treatment systems may be granted a license without examination under this chapter, if:

(1) The education, experience, and/or examination forming the basis of the license is determined by the board to be equal to or greater than the conditions for the issuance of a license under this chapter; and

(2) The individual has paid the applicable fee and has submitted the necessary application form.

Sec. 12. RCW 18.210.190 and 1999 c 263 s 20 are each amended to read as follows:

(1) Employees of local health jurisdictions who review, inspect, or approve the design and construction of on-site wastewater treatment systems shall obtain a certificate of competency by obtaining a passing score on the written examination administered for licensure under this chapter. Eligibility to apply

for the certificate of competency is based upon a written request from the local health director or designee and payment of a fee established by the director. (~~Applications for a certificate of competency may not be accepted until on or after July 1, 2000.~~) The certificate of competency is renewable upon payment of a fee established by the director. Certificate holders are also subject to the requirements of RCW 18.210.140(1).

(2) Issuance of the certificate of competency does not authorize the certificate holder to offer or provide on-site wastewater treatment system design services. However, nothing in this chapter limits or affects the ability of local health jurisdictions to perform on-site design services under their authority in chapter 70.05 RCW.

(3) Local health jurisdictions and the state department of health retain authority to:

(a) Administer state and local regulations and codes for approval or disapproval of designs for on-site wastewater treatment systems;

(b) Issue permits for construction;

(c) Evaluate soils and site conditions for compliance with code requirements; and

(d) Perform on-site wastewater treatment design work as authorized in state and local board of health rules.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

(1) RCW 18.210.090 (Practice permits—License) and 1999 c 263 s 10; and

(2) RCW 18.210.210 (Chapter evaluation—Financial assurance) and 1999 c 263 s 23.

Passed by the House February 22, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 257

[Engrossed Substitute House Bill 1071]

COMPLETE STREETS GRANT PROGRAM

AN ACT Relating to creating a complete streets grant program; adding new sections to chapter 47.04 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. Urban main streets should be designed to provide safe access to all users, including bicyclists, pedestrians, motorists, and public transportation users. Context sensitive design and engineering principles allow for flexible solutions depending on a community's needs, and result in many positive outcomes for cities and towns, including improving the health and safety of a community. It is the intent of the legislature to encourage street designs that safely meet the needs of all users and also protect and preserve a community's environment and character.

NEW SECTION. Sec. 2. A new section is added to chapter 47.04 RCW to read as follows:

(1) The department shall establish a complete streets grant program within the department's highways and local programs division, or its successor. During program development, the department shall include, at a minimum, the department of archaeology and historic preservation, local governments, and other organizations or groups that are interested in the complete streets grant program. The purpose of the grant program is to encourage local governments to adopt urban arterial retrofit street ordinances designed to provide safe access to all users, including bicyclists, pedestrians, motorists, and public transportation users, with the goals of:

(a) Promoting healthy communities by encouraging walking, bicycling, and using public transportation;

(b) Improving safety by designing major arterials to include features such as wider sidewalks, dedicated bicycle facilities, medians, and pedestrian streetscape features, including trees where appropriate.

(c) Protecting the environment and reducing congestion by providing safe alternatives to single-occupancy driving; and

(d) Preserving community character by involving local citizens and stakeholders to participate in planning and design decisions.

(2) For purposes of this section:

(a) "Eligible project" means (i) a local government street retrofit project that includes the addition of, or significant repair to, facilities that provide street access with all users in mind, including pedestrians, bicyclists, and public transportation users; or (ii) a retrofit project on city streets that are part of a state highway that include the addition of, or significant repair to, facilities that provide street access with all users in mind, including pedestrians, bicyclists, and public transportation users.

(b) "Local government" means incorporated cities and towns that have adopted a jurisdiction-wide complete streets ordinance that plans for the needs of all users and is consistent with sound engineering principles.

(c) "Sound engineering principles" means peer-reviewed, context sensitive solutions guides, reports, and publications, consistent with the purposes of this section.

(3) In carrying out the purposes of this section, the department may award funding, subject to the availability of amounts appropriated for this specific purpose, only to eligible projects that are designed consistent with sound engineering principles.

(4) The department must report annually to the transportation committees of the legislature on the status of any grant projects funded by the program created under this section.

NEW SECTION. Sec. 3. A new section is added to chapter 47.04 RCW to read as follows:

(1) The complete streets grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Only the department may authorize expenditures from the account. The department may use complete streets grant program funds for city streets, and city streets that are part of a state highway. Expenditures from the account may be used solely for the grants provided under section 2 of this act.

(2) The department may solicit and receive gifts, grants, or endowments from private and other sources that are made, in trust or otherwise, for the use

and benefit of the purposes of the complete streets grant program as provided in section 2 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 47.04 RCW to read as follows:

When constructing, reconstructing, or making major improvements to streets described in RCW 47.24.010, the department must, for street projects initially planned or scoped after July 1, 2011:

(1) Consult with local jurisdictions in the design and planning phases. Consultation with local jurisdictions must include public outreach and meetings with interested stakeholders in the predesign phase for the purpose of clarifying community goals and priorities through community design exercises prior to developing any designs or visualizations; and

(2) Consider the needs of all users by applying context sensitive design solutions consistent with peer-reviewed, context sensitive solutions guides, reports, and publications, consistent with the purposes of this section.

Passed by the House April 13, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 258

[Engrossed Substitute House Bill 1332]

JOINT MUNICIPAL UTILITY SERVICES

AN ACT Relating to the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services; amending RCW 4.96.010, 86.09.720, and 86.15.035; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.16 RCW; and adding a new chapter to Title 39 RCW.

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

NEW SECTION. Sec. 1. TITLE OF ACT—DECLARATION OF PURPOSE. (1) This act shall be known as the joint municipal utility services act.

(2) It is the purpose of this act to improve the ability of local government utilities to plan, finance, construct, acquire, maintain, operate, and provide facilities and utility services to the public, and to reduce costs and improve the benefits, efficiency, and quality of utility services.

(3) This act is intended to facilitate joint municipal utility services and is not intended to expand the types of services provided by local governments or their utilities. Further, nothing in this act is intended to alter the regulatory powers of cities, counties, or other local governments or state agencies that exercise such powers. Further, nothing in this act may be construed to alter the underlying authority of the units of local government that enter into agreements under this act or to diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means a joint municipal utility services agreement, among members, that forms an authority, as more fully described in this chapter.

(2) "Authority" means a joint municipal utility services authority formed under this chapter.

(3) "Board of directors" or "board" means the board of directors of an authority.

(4) "Member" means a city, town, county, water-sewer district, public utility district, other special purpose district, municipal corporation, or other unit of local government of this or another state that provides utility services, and any Indian tribe recognized as such by the United States government, that is a party to an agreement forming an authority.

(5) "Utility services," for purposes of this chapter, means any or all of the following functions: The provision of retail or wholesale water supply and water conservation services; the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; the provision of point and nonpoint water pollution monitoring programs; the provision for the generation, production, storage, distribution, use, or management of reclaimed water; and the management and handling of storm water, surface water, drainage, and flood waters.

NEW SECTION. Sec. 3. FORMATION OF JOINT MUNICIPAL UTILITY SERVICES AUTHORITIES—CHARACTERISTICS—SUBSTANTIVE POWERS. (1) An authority may be formed by two or more members pursuant to this chapter by execution of a joint municipal utility services agreement that materially complies with the requirements of section 5 of this act. Except as otherwise provided in section 8 of this act, at the time of execution of an agreement each member must be providing the type of utility service or services that will be provided by the authority. The agreement must be approved by the legislative authority of each of the members. The agreement must be filed with the Washington state secretary of state, who must provide a certificate of filing with respect to any authority. An authority shall be deemed to have been formed as of the date of that filing. The formation and activities of an authority, and the admission or withdrawal of members, are not subject to review by any boundary review board. Any amendments to an agreement must be filed with the Washington state secretary of state, and will become effective on the date of filing.

(2) An authority is a municipal corporation. Subject to section 4(3) of this act, the provisions of a joint municipal utility services agreement, and any limitations imposed pursuant to section 5 of this act: (a) An authority may perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide under applicable law; and (b) in performing or providing those utility services, an authority may exercise any or all of the powers described in section 4(1) of this act.

(3) An authority shall be entitled to all the immunities and exemptions that are available to local governmental entities under applicable law, including without limitation the provisions of chapter 4.96 RCW. Notwithstanding this subsection (3), if all of an authority's members are the same type of Washington local government entity, then the immunities and exemptions available to that type of entity shall govern.

(4) Nothing in this chapter shall diminish a member's powers in connection with its provision or management of utility services, or its taxing power with respect to those services, nor does this chapter diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law.

(5) Nothing in this chapter shall impair or diminish a valid water right, including rights established under state law and rights established under federal law.

NEW SECTION. Sec. 4. CORPORATE POWERS OF JOINT MUNICIPAL UTILITY SERVICES AUTHORITIES. (1) For the purpose of performing or providing utility services, and subject to subsection (3) of this section and section 5 of this act, an authority has and is entitled to exercise the following powers:

- (a) To sue and be sued, complain and defend, in its corporate name;
- (b) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
- (c) To purchase, take, receive, take by lease, condemn, receive by grant, or otherwise acquire, and to own, hold, improve, use, operate, maintain, add to, extend, and fully control the use of and otherwise deal in and with, real or personal property or property rights, including without limitation water and water rights, or other assets, or any interest therein, wherever situated;
- (d) To sell, convey, lease out, exchange, transfer, surplus, and otherwise dispose of all or any part of its property and assets;
- (e) To incur liabilities for any of its utility services purposes, to borrow money at such rates of interest as the authority may determine, to issue its bonds, notes, and other obligations, and to pledge any or all of its revenues to the repayment of bonds, notes, and other obligations;
- (f) To enter into contracts for any of its utility services purposes with any individual or entity, both public and private, and to enter into intergovernmental agreements with its members and with other public agencies;
- (g) To be eligible to apply for and to receive state, federal, and private grants, loans, and assistance that any of its members are eligible to receive in connection with the development, design, acquisition, construction, maintenance, and/or operation of facilities and programs for utility services;
- (h) To adopt and alter rules, policies, and guidelines, not inconsistent with this chapter or with other laws of this state, for the administration and regulation of the affairs and assets of the authority;
- (i) To obtain insurance, to self-insure, and to participate in pool insurance programs;
- (j) To indemnify any officer, director, employee, volunteer, or former officer, employee, or volunteer, or any member, for acts, errors, or omissions performed in the exercise of their duties in the manner approved by the board;
- (k) To employ such persons, as public employees, that the board determines are needed to carry out the authority's purposes and to fix wages, salaries, and benefits, and to establish any bond requirements for those employees;
- (l) To provide for and pay pensions and participate in pension plans and other benefit plans for any or all of its officers or employees, as public employees;

- (m) To determine and impose fees, rates, and charges for its utility services;
 - (n) Subject to section 5(20) of this act, to have a lien for delinquent and unpaid rates and charges for retail connections and retail utility service to the public, together with recording fees and penalties (not exceeding eight percent) determined by the board, including interest (at a rate determined by the board) on such rates, charges, fees, and penalties, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments;
 - (o) To make expenditures to promote and advertise its programs, educate its members, customers, and the general public, and provide and support conservation and other practices in connection with providing utility services;
 - (p) With the consent of the member within whose geographic boundaries an authority is so acting, to compel all property owners within an area served by a wastewater collection system owned or operated by an authority to connect their private drain and sewer systems with that system, or to participate in and follow the requirements of an inspection and maintenance program for on-site systems, and to pay associated rates and charges, under such terms and conditions, and such penalties, as the board shall prescribe by resolution;
 - (q) With the consent of the member within whose geographic or service area boundaries an authority is so acting, to create local improvement districts or utility local improvement districts, to impose and collect assessments and to issue bonds and notes, all consistent with the statutes governing local improvement districts or utility local improvement districts applicable to the member that has provided such consent. Notwithstanding this subsection (1)(q), the guaranty fund provisions of chapter 35.54 RCW shall not apply to a local improvement district created by an authority;
 - (r) To receive contributions or other transfers of real and personal property and property rights, money, other assets, and franchise rights, wherever situated, from its members or from any other person;
 - (s) To prepare and submit plans relating to utility services on behalf of itself or its members;
 - (t) To terminate its operations, wind up its affairs, dissolve, and provide for the handling and distribution of its assets and liabilities in a manner consistent with the applicable agreement;
 - (u) To transfer its assets, rights, obligations, and liabilities to a successor entity, including without limitation a successor authority or municipal corporation;
 - (v) Subject to subsection (3) of this section, section 5 of this act, and applicable law, to have and exercise any other corporate powers capable of being exercised by any of its members in providing utility services;
- (2) An authority, as a municipal corporation, is subject to the public records act (chapter 42.56 RCW), the open public meetings act (chapter 42.30 RCW), and the code of ethics for municipal officers (chapter 42.23 RCW), and an authority is subject to audit by the state auditor under chapter 43.09 RCW.
- (3) In the exercise of its powers in connection with performing or providing utility services, an authority is subject to the following:
- (a) An authority has no power to levy taxes.

(b) An authority has the power of eminent domain as necessary to perform or provide utility services, but only if all of its members, other than tribal government members, have powers of eminent domain. Further, an authority may exercise the power of eminent domain only pursuant to the provisions of Washington law, in the manner and subject to the statutory limitations applicable to one or more of its Washington local government members. If all of its members are the same type of Washington governmental entity, then the statute governing the exercise of eminent domain by that type of entity shall govern. An authority may not exercise the power of eminent domain with respect to property owned by a city, town, county, special purpose district, authority, or other unit of local government, but may acquire or use such property under mutually agreed upon terms and conditions.

(c) An authority may pledge its revenues in connection with its obligations, and may acquire property or property rights through and subject to the terms of a conditional sales contract, a real estate contract, or a financing contract under chapter 39.94 RCW, or other federal or state financing program. However, an authority must not in any other manner mortgage or provide security interests in its real or personal property or property rights. As a local governmental entity without taxing power, an authority may not issue general obligation bonds. However, an authority may pledge its full faith and credit to the payment of amounts due pursuant to a financing contract under chapter 39.94 RCW or other federal or state financing program.

(d) In order for an authority to provide a particular utility service in a geographical area, one or more of its members must have authority, under applicable law, to provide that utility service in that geographical area.

(e) As a separate municipal corporation, an authority's obligations and liabilities are its own and are not obligations or liabilities of its members except to the extent and in the manner established under the provisions of an agreement or otherwise expressly provided by contract.

(f) Upon its dissolution, after provision is made for an authority's liabilities, remaining assets must be distributed to a successor entity, or to one or more of the members, or to another public body of this state.

NEW SECTION. Sec. 5. ELEMENTS OF JOINT MUNICIPAL UTILITY SERVICES AGREEMENTS. A joint municipal utility services agreement that forms and governs an authority must include the elements described in this section, together with such other provisions an authority's members deem appropriate. However, the failure of an agreement to include each and every one of the elements described in this section shall not render the agreement invalid. An agreement must:

(1) Identify the members, together with conditions upon which additional members that are providing utility services may join the authority, the conditions upon which members may or must withdraw, including provisions for handling of relevant assets and liabilities upon a withdrawal, and the effect of boundary adjustments of the authority and boundary adjustments between or among members;

(2) State the name of the authority;

(3) Describe the utility services that the authority will provide;

(4) Specify how the number of directors of the authority's board will be determined, and how those directors will be appointed. Each director on the

board of an authority must be an elected official of a member. Except as limited by an agreement, an authority's board may exercise the authority's powers;

(5) Describe how votes of the members represented on the authority's board are to be weighted, and set forth any limitations on the exercise of powers of the authority's board, which may include, by way of example, requirements that certain decisions be made by a supermajority of members represented on an authority's board, based on the number of members and/or some other factor or factors, and that certain decisions be ratified by the legislative authorities of the members;

(6) Describe how the agreement is to be amended;

(7) Describe how the authority's rules may be adopted and amended;

(8) Specify the circumstances under which the authority may be dissolved, and how it may terminate its operations, wind up its affairs, and provide for the handling, assumption, and/or distribution of its assets and liabilities;

(9) List any legally authorized substantive or corporate powers that the authority will not exercise;

(10) Specify under which personnel laws the authority will operate, which may be the personnel laws applicable to any one of its Washington local government members;

(11) Specify under which public works and procurement laws the authority will operate, which may be the public works and procurement laws applicable to any one of its Washington local government members;

(12) Consistent with section 4(3)(b) of this act, specify under which Washington eminent domain laws any condemnations by the authority will be subject;

(13) Specify how the treasurer of the authority will be appointed, which may be an officer or employee of the authority, the treasurer or chief finance officer of any Washington local government member, or the treasurer of any Washington county in which any member of the authority is located. However, if the total number of utility customers of all of the members of an authority does not exceed two thousand five hundred, the treasurer of an authority must be either the treasurer of any member or the treasurer of a county in which any member of the authority is located;

(14) Specify under which Washington state statute or statutes surplus property of the authority will be disposed;

(15) Describe how the authority's budgets will be prepared and adopted;

(16) Describe how any assets of members that are transferred to or managed by the authority will be accounted for;

(17) Generally describe the financial obligations of members to the authority;

(18) Describe how rates and charges imposed by the authority, if any, will be determined. An agreement may specify a specific Washington state statute applicable to one or all of its members for the purpose of governing rate-setting criteria applicable to retail customers, if any;

(19) Specify the Washington state statute or statutes under which bonds, notes, and other obligations of the authority will be issued for the purpose of performing or providing utility services, which must be a bond issuance statute applicable to one or more of its members other than a tribal member. If all of its members are the same type of Washington governmental entity, then a

Washington state statute or statutes governing the issuance of bonds, notes, and other obligations issued by that type of entity shall govern;

(20) Specify under which Washington state statute or statutes any liens of an authority shall be exercised, which must be statutes applicable to the type or types of utility service for which the lien shall apply. Further, if all of its members are the same type of Washington governmental entity, then the statute or statutes governing that type of entity shall govern;

(21) Include any other provisions deemed necessary and appropriate by the members.

NEW SECTION. Sec. 6. AUTHORITY OF MEMBERS TO ASSIST AUTHORITY AND TO TRANSFER FUNDS, PROPERTY, AND OTHER ASSETS. For the purpose of assisting the authority in providing utility services, the members of an authority are authorized, with or without payment or other consideration and without submitting the matter to the electors of those members, to lease, convey, transfer, assign, or otherwise make available to an authority any money, real or personal property or property rights, other assets including licenses, water rights (subject to applicable law), other property (whether held by a member's utility or by a member's general government), or franchises or rights thereunder.

NEW SECTION. Sec. 7. TAX EXEMPTIONS AND PREFERENCES. (1) As a municipal corporation, the property of an authority is exempt from taxation.

(2) An authority is entitled to all of the exemptions from or preferences with respect to taxes that are available to any or all of its members, other than a tribal member, in connection with the provision or management of utility services.

NEW SECTION. Sec. 8. CONVERSION OF EXISTING ENTITIES INTO AUTHORITIES. (1) Any intergovernmental entity formed under chapter 39.34 RCW or other applicable law may become a joint municipal utility services authority and be entitled to all the powers and privileges available under this chapter, if: (a) The public agencies that are parties to an existing interlocal agreement would otherwise be eligible to form an authority to provide the relevant utility services; (b) the public agencies that are parties to the existing interlocal agreement amend, restate, or replace that interlocal agreement so that it materially complies with the requirements of section 5 of this act; (c) the amended, restated, or replacement agreement is filed with the Washington state secretary of state consistent with section 3 of this act; and (d) the amended, restated, or replacement agreement expressly provides that all rights and obligations of the entity formerly existing under chapter 39.34 RCW or other applicable law shall thereafter be the obligations of the new authority created under this chapter. Upon compliance with those requirements, the new authority shall be a successor of the former intergovernmental entity for all purposes, and all rights and obligations of the former entity shall transfer to the new authority. Those obligations shall be treated as having been incurred, entered into, or issued by the new authority, and those obligations shall remain in full force and effect and shall continue to be enforceable in accordance with their terms.

(2) If an interlocal agreement under chapter 39.34 RCW or other applicable law relating to utility services includes among its original participants a city or county that does not itself provide or no longer provides utility services, that city

or county may continue as a party to the amended, restated, or replacement agreement and shall be treated as a member for all purposes under this chapter.

NEW SECTION. Sec. 9. POWERS CONFERRED BY CHAPTER ARE SUPPLEMENTAL. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this chapter shall be construed as limiting any other powers or authority of any member or any other entity formed under chapter 39.34 RCW or other applicable law.

Sec. 10. RCW 4.96.010 and 2001 c 119 s 1 are each amended to read as follows:

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

NEW SECTION. Sec. 11. A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.— RCW (the new chapter created in section 17 of this act) and any of its members.

NEW SECTION. Sec. 12. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to any sales, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.— RCW (the new chapter created in section 17 of this act) and any of its members.

NEW SECTION. Sec. 13. A new section is added to chapter 82.12 RCW to read as follows:

The tax levied by RCW 82.12.020 shall not apply to any sales, or uses by, or transfers made, to or from a joint municipal utility services authority formed under chapter 39.— RCW (the new chapter created in section 17 of this act) and any of its members.

NEW SECTION. Sec. 14. A new section is added to chapter 82.16 RCW to read as follows:

This chapter does not apply to any payments between, or any transfer of assets to or from, a joint municipal utility services authority created under chapter 39.— RCW (the new chapter created in section 17 of this act) and any of its members.

Sec. 15. RCW 86.09.720 and 2003 c 327 s 18 are each amended to read as follows:

In addition to the authority provided in this chapter, flood control districts may participate in and expend revenue on cooperative watershed management arrangements and actions, including ~~((watershed management partnerships under RCW 39.34.210))~~ without limitation those under chapter 39.34 RCW, under chapter 39.— RCW (the new chapter created in section 17 of this act), and under other intergovernmental agreements authorized by law, for purposes of water supply, water quality, and water resource and habitat protection and management.

Sec. 16. RCW 86.15.035 and 2003 c 327 s 19 are each amended to read as follows:

In addition to the authority provided in this chapter, flood control zone districts may participate in and expend revenue on cooperative watershed management arrangements and actions, including ~~((watershed management partnerships under RCW 39.34.210))~~ without limitation those under chapter 39.34 RCW, under chapter 39.— RCW (the new chapter created in section 17 of this act), and under other intergovernmental agreements authorized by law, for purposes of water supply, water quality, and water resource and habitat protection and management.

NEW SECTION. Sec. 17. CODIFICATION. Sections 1 through 9 of this act constitute a new chapter in Title 39 RCW.

Passed by the House April 15, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 259

[Engrossed House Bill 1409]

PUBLIC PROPERTY—SALE, TRANSFER, EXCHANGE, OR LEASE

AN ACT Relating to the sale, exchange, transfer, or lease of public property; and amending RCW 39.33.010.

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

Sec. 1. RCW 39.33.010 and 2003 c 303 s 1 are each amended to read as follows:

(1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, or a federally recognized Indian tribe, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or any

political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 260

[Engrossed Second Substitute House Bill 1546]

INNOVATION SCHOOLS AND ZONES

AN ACT Relating to authorizing creation of innovation schools and innovation zones focused on science, technology, engineering, and mathematics in school districts; amending RCW 28A.305.140 and 28A.655.180; adding new sections to chapter 28A.630 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) School district boards of directors are encouraged to support the expansion of innovative K-12 school or K-12 program models, with a priority on models focused on the arts, science, technology, engineering, and mathematics (A-STEM) that partner with business, industry, and higher education to increase A-STEM pathways that use project-based or hands-on learning for elementary, middle, and high school students; and

(b) Particularly in schools and communities that are struggling to improve student academic outcomes and close the educational opportunity gap, there is a critical need for innovative models of public education, with a priority on models that are tailored to A-STEM-related programs that implement interdisciplinary instructional delivery methods that are engaging, rigorous, and culturally relevant at each grade level.

(2) Therefore, the legislature intends to create a framework for change that includes:

(a) Leveraging community assets;

(b) Improving staff capacity and effectiveness;

(c) Developing family, school, business, industry, A-STEM professionals, and higher education partnerships in A-STEM education at all grade levels that can lead to industry certification or dual high school and college credit;

(d) Implementing evidence-based practices proven to be effective in reducing demographic disparities in student achievement; and

(e) Enabling educators and parents of selected schools and school districts to restructure school operations and develop model A-STEM programs that will improve student performance and close the educational opportunity gap.

NEW SECTION. Sec. 2. (1) The office of the superintendent of public instruction shall develop a process for school districts to apply to have one or more schools within the district designated as an innovation school, with a priority on schools focused on the arts, science, technology, engineering, and mathematics (A-STEM) that actively partners with the community, business, industry, and higher education, and uses project-based or hands-on learning. A group of schools that share common interests, such as geographical location, or that sequentially serve classes of students as they progress through elementary and secondary grades may be designated as an innovation zone. An innovation zone may include all schools within a school district. Consortia of multiple districts may also apply for designation as an innovation zone, to include all schools within the participating districts.

(2) Applications requesting designation of innovation schools or innovation zones must be developed by the school district in collaboration with educators, parents, businesses, industries, and the communities of participating schools. School districts must ensure that each school has substantial opportunity to participate in the development of the innovation plan under section 4 of this act.

(3) The office of the superintendent of public instruction shall develop common criteria for reviewing applications and for evaluating the need for waivers of state statutes and administrative rules as provided under section 5 of this act.

NEW SECTION. Sec. 3. (1) Applications to designate innovation schools and innovation zones must be submitted by school district boards of directors to their respective educational service districts by January 6, 2012, to be implemented beginning in the 2012-13 school year. Innovation plans must be able to be implemented without supplemental state funds.

(2) Each educational service district boards of directors shall review applications from within the district using the common criteria developed by the office of the superintendent of public instruction. Each educational service district shall recommend approval by the office of the superintendent of public instruction of no more than three applications from within each educational service district, no fewer than two of which must be focused on A-STEM-related innovations and no more than one of which may focus on other innovations. However, any educational service district with over three hundred fifty thousand full-time equivalent students may recommend approval of no more than ten applications from within the educational service district, no fewer than half of which must be focused on A-STEM-related innovations and no more than half of which may focus on other innovations. At least one of the recommended applications in each educational service district must propose an innovation zone, as long as the application meets the review criteria.

(3) The office of the superintendent of public instruction shall approve the innovation plans of the applicants recommended by the educational service districts. School districts that have applied shall be notified by March 1, 2012, whether they were selected.

(4) Designation of innovation schools and innovation zones under this section shall be for a six-year period, beginning in the 2012-13 school year, unless the designation is revoked in accordance with section 7 of this act.

NEW SECTION. Sec. 4. (1) Each application for designation of an innovation school or innovation zone must include a proposed plan that:

(a) Defines the scope of the innovation school or innovation zone and describes why designation would enhance the ability of the school or schools to improve student achievement and close the educational opportunity gap including by implementing a program focused on the arts, science, technology, engineering, and mathematics themes that partner with the community, business, industry, and higher education and use project-based or hands-on learning;

(b) Enumerates specific, research-based activities and innovations to be carried out under the designation;

(c) Justifies each request for waiver of state statutes or administrative rules as provided under section 5 of this act;

(d) Justifies any requests for waiver of state statutes or administrative rules that are in addition to the waivers authorized under section 5 of this act that are necessary to carry out the proposed innovations;

(e) Identifies the improvements in student achievement and the educational opportunity gap that are expected to be accomplished through the innovations;

(f) Includes budget plans and anticipated sources of funding, including private grants and contributions, if any;

(g) Identifies the technical resources desired, the potential costs of those resources, and the institutions of higher education, educational service districts, businesses, industries, or consultants available to provide such services;

(h) Identifies the multiple measures for evaluation and accountability to be used to measure improvement in student achievement, closure in the educational opportunity gap, and the overall performance of the innovation school or innovation zone, including but not limited to assessment scores, graduation rates, and dropout rates;

(i) Includes a written statement that school directors and administrators are willing to exempt the designated school or schools from specifically identified local rules, as needed;

(j) Includes a written statement that school directors and local bargaining agents will modify those portions of their local agreements as applicable for the designated school or schools;

(k) Includes written statements of support from the district's board of directors, the superintendent, the principal and staff of schools seeking designation, each local employee association affected by the proposal, the local parent organization, and statements of support, willingness to participate, or concerns from any interested parent, business, institution of higher education, or community organization; and

(l) Commits all parties to work cooperatively during the term of the pilot project.

(2) A plan to designate an innovation school or innovation zone must be approved by a majority of the staff assigned to the school or schools participating in the plan.

NEW SECTION. Sec. 5. (1)(a) The superintendent of public instruction and the state board of education, each within the scope of their statutory authority, may grant waivers of state statutes and administrative rules for designated innovation schools and innovation zones as follows:

(i) Waivers may be granted under RCW 28A.655.180 and 28A.305.140;

(ii) Waivers may be granted to permit the commingling of funds appropriated by the legislature on a categorical basis for such programs as, but not limited to, highly capable students, transitional bilingual instruction, and learning assistance; and

(iii) Waivers may be granted of other administrative rules that in the opinion of the superintendent of public instruction or the state board of education are necessary to be waived to implement an innovation school or innovation zone.

(b) State administrative rules dealing with public health, safety, and civil rights, including accessibility for individuals with disabilities, may not be waived.

(2) At the request of a school district, the superintendent of public instruction may petition the United States department of education or other federal agencies to waive federal regulations necessary to implement an innovation school or innovation zone.

(3) The state board of education may grant waivers for innovation schools or innovation zones of administrative rules pertaining to calculation of course credits for high school courses.

(4) Waivers may be granted under this section for a period not to exceed the duration of the designation of the innovation school or innovation zone.

(5) The superintendent of public instruction and the state board of education shall provide an expedited review of requests for waivers for designated innovation schools and innovation zones. Requests may be denied if the superintendent of public instruction or the state board of education conclude that the waiver:

(a) Is likely to result in a decrease in academic achievement in the innovation school or innovation zone;

(b) Would jeopardize the receipt of state or federal funds that a school district would otherwise be eligible to receive, unless the school district submits a written authorization for the waiver acknowledging that receipt of these funds could be jeopardized; or

(c) Would violate state or federal laws or rules that are not authorized to be waived.

NEW SECTION. Sec. 6. (1) The office of the superintendent of public instruction shall report to the education committees of the legislature on the progress of the designated innovation schools and innovation zones by January 15, 2013, and January 15th of each odd-numbered year thereafter. The report must include recommendations for waiver of state laws and administrative rules in addition to the waivers authorized under section 5 of this act, as identified in innovation plans submitted by school districts.

(2) Each innovation school and innovation zone must submit an annual report to the office of the superintendent of public instruction on their progress.

(3) The office of the superintendent of public instruction, through the center for the improvement of student learning, must collect and disseminate to all school districts and other interested parties information about the innovation schools and innovation zones.

NEW SECTION. Sec. 7. After reviewing the annual reports of each innovation school and zone, if the office of the superintendent of public instruction determines that the school or zone is not increasing progress over

time as determined by the multiple measures for evaluation and accountability provided in the school or zone plan in accordance with section 4 of this act then the superintendent shall revoke the designation.

Sec. 8. RCW 28A.305.140 and 1990 c 33 s 267 are each amended to read as follows:

(1) The state board of education may grant waivers to school districts from the provisions of RCW 28A.150.200 through 28A.150.220 on the basis that such waiver or waivers are necessary to:

(a) Implement successfully a local plan to provide for all students in the district an effective education system that is designed to enhance the educational program for each student. The local plan may include alternative ways to provide effective educational programs for students who experience difficulty with the regular education program; or

(b) Implement an innovation school or innovation zone designated under section 3 of this act.

(2) The state board shall adopt criteria to evaluate the need for the waiver or waivers.

Sec. 9. RCW 28A.655.180 and 2009 c 543 s 3 are each amended to read as follows:

(1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to districts from the provisions of statutes or rules relating to: The length of the school year; student-to-teacher ratios; and other administrative rules that in the opinion of the state board of education or the opinion of the superintendent of public instruction may need to be waived in order for a district to implement a plan for restructuring its educational program or the educational program of individual schools within the district or to implement an innovation school or innovation zone designated under section 3 of this act.

(2) School districts may use the application process in RCW 28A.305.140 to apply for the waivers under this section.

NEW SECTION. Sec. 10. Sections 2 through 7 of this act are each added to chapter 28A.630 RCW.

NEW SECTION. Sec. 11. This act expires June 30, 2019.

Passed by the House April 21, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 261

[Substitute House Bill 1570]

ENERGY FACILITY SITING

AN ACT Relating to siting of energy facility projects; amending RCW 80.50.071; adding a new section to chapter 36.01 RCW; adding a new section to chapter 35.63 RCW; and adding a new section to chapter 35A.63 RCW.

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

Sec. 1. RCW 80.50.071 and 2010 c 152 s 3 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. Each applicant shall pay such reasonable costs as are actually and necessarily incurred by the council in processing an application.

(a) Each applicant shall, at the time of application submission, deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the applicant. Costs that may be charged against the deposit include, but are not limited to, independent consultants' costs, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, goods and services, travel expenses, and miscellaneous direct expenses as arise directly from processing an application.

(b) The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

(c) The council shall submit to each applicant a statement of such expenditures made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(2) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder, within thirty days of execution of the site certification agreement, shall have on deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the certificate holder. Costs that may be charged against the deposit include, but are not limited to, those specified in subsection (1)(a) of this section as arise from inspection and determination of compliance by the certificate holder with the terms of the certification.

(b) The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(4) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

(5)(a) Upon receipt of an application for an energy facility site certification proposing an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the council shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(i) A description of the proposed energy plant or alternative energy resource;

(ii) The location of the site;

(iii) The placement of the energy plant or alternative energy resource on the site;

(iv) The date and time by which comments must be received by the council;
and

(v) Contact information of the council and the applicant.

(b) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a site certification application is approved. The time period set forth by the council for receipt of such comments shall not extend the time period for the council's processing of the application.

(c) In order to assist local governments required to notify the United States department of defense under sections 2 through 4 of this act, the council shall post on its web site the appropriate information for contacting the United States department of defense.

NEW SECTION. Sec. 2. A new section is added to chapter 36.01 RCW to read as follows:

(1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the county shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(a) A description of the proposed energy plant or alternative energy resource;

(b) The location of the site;

(c) The number and placement of the energy plant or alternative energy resource on the site;

(d) The date and time by which comments must be received by the county;
and

(e) Contact information of the county permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the county for receipt of such comments shall not extend the time period for the county's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020.

NEW SECTION. Sec. 3. A new section is added to chapter 35.63 RCW to read as follows:

(1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the city or town shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(a) A description of the proposed energy plant or alternative energy resource;

(b) The location of the site;

(c) The placement of the energy plant or alternative energy resource on the site;

(d) The date and time by which comments must be received by the city or town; and

(e) Contact information of the city or town permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the city or town for receipt of such comments shall not extend the time period for the city's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020.

NEW SECTION. Sec. 4. A new section is added to chapter 35A.63 RCW to read as follows:

(1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the city shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(a) A description of the proposed energy plant or alternative energy resource;

(b) The location of the site;

(c) The placement of the energy plant or alternative energy resource on the site;

(d) The date and time by which comments must be received by the city; and

(e) Contact information of the city permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the city for receipt of such comments shall not extend the time period for the city's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 262

[House Bill 1594]

FINANCIAL EDUCATION PUBLIC-PRIVATE PARTNERSHIP

AN ACT Relating to the membership and work of the financial education public-private partnership; and amending RCW 28A.300.450 and 28A.300.462.

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

Sec. 1. RCW 28A.300.450 and 2009 c 443 s 1 are each amended to read as follows:

(1) A financial education public-private partnership is established, composed of the following members:

(a) Four members of the legislature, with one member from each caucus of the house of representatives appointed for a two-year term of service by the speaker of the house of representatives, and one member from each caucus of the senate appointed for a two-year term of service by the president of the senate;

(b) Four representatives from the private for-profit and nonprofit financial services sector, including at least one representative from the jumpstart coalition, to be appointed for a staggered two-year term of service by the governor;

(c) Four teachers to be appointed for a staggered two-year term of service by the superintendent of public instruction, with one each representing the elementary, middle, secondary, and postsecondary education sectors;

(d) A representative from the department of financial institutions to be appointed for a two-year term of service by the director;

(e) Two representatives from the office of the superintendent of public instruction, with one involved in curriculum development and one involved in teacher professional development, to be appointed for a staggered two-year term of service by the superintendent.

(2) The chair of the partnership shall be selected by the members of the partnership from among the legislative members.

(3) One-half of the members appointed under subsections (1)(b), (c), and (e) of this section shall be appointed for a one-year term beginning August 1, 2011, and a two-year term thereafter.

(4) To the extent funds are appropriated or are available for this purpose, the partnership may hire a staff person who shall reside in the office of the

superintendent of public instruction for administrative purposes. Additional technical and logistical support may be provided by the office of the superintendent of public instruction, the department of financial institutions, the organizations composing the partnership, and other participants in the financial education public-private partnership.

~~((4))~~ (5) The members of the partnership shall be appointed by August 1, ~~((2009))~~ 2011.

~~((5))~~ (6) Legislative members of the partnership shall receive per diem and travel under RCW 44.04.120.

~~((6))~~ (7) Travel and other expenses of members of the partnership shall be provided by the agency, association, or organization that member represents.

~~((7))~~ (8) This section shall be implemented to the extent funds are available.

Sec. 2. RCW 28A.300.462 and 2009 c 443 s 3 are each amended to read as follows:

(1) School districts are encouraged to voluntarily adopt the jumpstart coalition national standards in K-12 personal finance education and provide students with an opportunity to master the standards.

(2) Subject to funds appropriated specifically for this purpose, the office of the superintendent of public instruction and the financial education public-private partnership shall provide technical assistance and grants to support demonstration projects for district-wide adoption and implementation of the financial education learning standards under this section.

~~((2))~~ (3) School districts may apply on a competitive basis to participate as a demonstration project. The office and the partnership shall select up to four school districts as demonstration projects, with two districts located in eastern Washington and two districts located in western Washington, if possible.

~~((3))~~ (4) Selected districts must:

(a) Adopt the jumpstart coalition national standards in K-12 personal finance education as the essential academic learning requirements for financial education and provide students with an opportunity to master the standards;

(b) Make a commitment to integrate financial education into instruction at all grade levels and in all schools in the district;

(c) Establish local partnerships within the community to promote financial education in the schools; and

(d) Conduct pre and posttesting of students' financial literacy.

~~((4))~~ (5) The office of the superintendent of public instruction, with the advice of the financial education public-private partnership, shall provide assistance to the demonstration projects regarding curriculum, professional development, and innovative instructional programs to implement the financial education standards.

~~((5))~~ (6) The selected districts must report findings and results of the demonstration project to the office of the superintendent of public instruction and appropriate committees of the legislature ~~((by April 30, 2011))~~ annually.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 263

[Engrossed Second Substitute House Bill 1634]

UNDERGROUND UTILITIES

AN ACT Relating to underground utilities; amending RCW 19.122.010, 19.122.020, 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040, 19.122.050, 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and 19.122.110; adding new sections to chapter 19.122 RCW; creating a new section; repealing RCW 19.122.060; prescribing penalties; providing an effective date; and providing expiration dates.

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

Sec. 1. RCW 19.122.010 and 1984 c 144 s 1 are each amended to read as follows:

~~(It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities.)~~ In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

- (1) Assigning responsibility for providing notice of proposed excavation, locating and marking underground utilities, and reporting and repairing damage;
- (2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;
- (3) Improving worker and public knowledge of safe practices;
- (4) Collecting and analyzing damage data;
- (5) Reviewing alleged violations; and
- (6) Enforcing this chapter.

Sec. 2. RCW 19.122.020 and 2007 c 142 s 9 are each amended to read as follows:

~~(Unless the context clearly requires otherwise,)~~ The definitions in this section apply throughout this chapter(=) unless the context clearly requires otherwise.

- (1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.
- (2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected ~~((utility owner))~~ facility operator determines that repairs are required.
- (3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.
- (4) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means ~~((=) except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline)).~~

(5) "Excavation confirmation code" means a code or ticket issued by ~~((the))~~ a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means:

(a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; ~~((and))~~

(b) Carbon dioxide ~~((The utilities and transportation commission may by rule incorporate by reference)); and~~

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

~~((("Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.~~

~~((10)))~~ "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

~~((11)))~~ (10) "Locatable underground facility" means an underground facility which can be ~~((field-marked))~~ marked with reasonable accuracy.

~~((12)))~~ (11) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

~~((13)))~~ (12) "Notice" or "notify" means contact in person or by telephone or other electronic method ~~((s that)), and, with respect to contact of a one-number locator service, also~~ results in the receipt of a valid excavation confirmation code.

~~((14)))~~ (13) "One-number locator service" means a service through which a person can notify ~~((utilities))~~ facility operators and request ~~((field-marking))~~ marking of underground facilities.

~~((15))~~ "Operator" means ~~the individual conducting the excavation.~~

~~((16)))~~ (14) "Person" means an individual, partnership, franchise holder, association, corporation, ~~((a))~~ the state, a city, a county, a town, or any subdivision or instrumentality of ~~((a))~~ the state, including any unit of local government, and its employees, agents, or legal representatives.

~~((17)))~~ (15) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

~~((18)))~~ (16) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. ~~((A))~~ "Pipeline company" does not include:

(a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or

(b) Excavation contractors or other contractors that contract with a pipeline company.

~~((19))~~ (17) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

~~((20))~~ (18) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at ~~(the)~~ a facility, provided that any discharge on the facility side of ~~(that)~~ the first valve will not directly impact waters of the state. ~~((A))~~ "Transfer pipeline" includes valves~~(;)~~ and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. ~~((A))~~ "Transfer pipeline" does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

~~((21))~~ (19) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

~~((22))~~ (20) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors that are below ground. This definition does not include pipelines as defined in subsection ~~((17))~~ (15) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(21) "Bar hole" means a hole made in the soil or pavement with a hand-operated bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(22) "Commission" means the utilities and transportation commission.

(23) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(24) "Equipment operator" means an individual conducting an excavation.

(25) "Facility operator" means any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

(26) "Large project" means a project that exceeds seven hundred linear feet.

(27) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(28) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not

limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

(29) "Utility easement" means a right held by a facility operator to install, maintain, and access an underground facility or pipeline.

Sec. 3. RCW 19.122.027 and 2005 c 448 s 2 are each amended to read as follows:

(1) ~~The ((utilities and transportation commission shall cause to be established))~~ commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) ~~The ((utilities and transportation))~~ commission, in consultation with the Washington utilities coordinating council, ((shall)) must establish minimum standards and best management practices for one-number locator services.

(3) ~~One-number locator services ((shall))~~ must be operated by nongovernmental agencies.

(4) All facility operators within a one-number locator service area must subscribe to the service.

(5) Failure to subscribe to a one-number locator service constitutes willful intent to avoid compliance with this chapter.

Sec. 4. RCW 19.122.030 and 2000 c 191 s 17 are each amended to read as follows:

(1)(a) Unless exempted under section 5 of this act, before commencing any excavation, ((excluding agriculture tilling less than twelve inches in depth, the excavator shall)) an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all ((owners of underground facilities)) facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

~~((All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities))~~ An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days ((or)) and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed ((by the parties)) by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

~~((this section, the owner of the underground facility shall))~~ subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information ((as to its locatable underground facilities by surface marking the location of the facilities. If there are)) by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, ((the owner of such facilities shall)) provide the excavator with ((the best)) available information as to their ((locations. The owner of the underground facility providing the information shall respond)) location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice ((or before the excavation time)) provided for in subsection (1) of this section or before excavation commences, at the option of the ((owner)) facility operator, unless otherwise agreed by the parties. ((Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

(4) The owner of the underground facility shall have))

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive ~~((compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator))~~ reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

~~((5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.~~

~~(6) Emergency excavations are exempt from the time requirements for notification provided in this section.~~

~~(7) If the excavator, while performing the contract,~~ (9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities ~~((which))~~ that are not identified, the excavator ~~((shall))~~ must cease excavating in the vicinity of the ~~((facility))~~ underground facilities and immediately notify the ~~((owner or))~~ facility operator ~~((of such facilities,))~~ or ~~((the))~~ a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and

may accept location information from the excavator for marking of the underground facility.

NEW SECTION. Sec. 5. A new section is added to chapter 19.122 RCW to read as follows:

(1) The requirements specified in RCW 19.122.030 do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW 19.122.050.

Sec. 6. RCW 19.122.033 and 2000 c 191 s 18 are each amended to read as follows:

(1) Before commencing any excavation, (~~excluding agricultural tilling less than twelve inches in depth,~~) an excavator (~~shall~~) **must** notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as (~~is~~) required for notifying (~~owners of underground facilities~~) facility operators of excavation (~~work~~) under RCW 19.122.030. Pipeline companies (~~shall~~) have the same rights and responsibilities as (~~owners of underground facilities~~) facility operators under RCW 19.122.030 regarding excavation (~~work~~). Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

(3) The state, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation

within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work.

(4) Any unit of local government that issues permits under codes adopted pursuant to chapter 19.27 RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline:

(a) Notify the pipeline company of the permitted activity when it issues the permit; or

(b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company.

(5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW 81.88.080.

Sec. 7. RCW 19.122.035 and 2000 c 191 s 19 are each amended to read as follows:

(1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation (~~(work)~~) will uncover any portion of the pipeline company's pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the (~~(operator of the hazardous liquid)~~) pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the (~~(company that operates the)~~) pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the (~~(utilities and transportation)~~) commission, consistent with reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of ecology of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 8. RCW 19.122.040 and 1984 c 144 s 4 are each amended to read as follows:

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following ~~((shall be))~~ are deemed to be changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; ~~((and))~~ or

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner, facility operator, or excavator if the project owner or excavator is also a ~~((utility))~~ facility operator.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator ~~((shall))~~ must:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation ~~((shall be))~~ is liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, ~~((different))~~ that differs from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees.

Sec. 9. RCW 19.122.050 and 1984 c 144 s 5 are each amended to read as follows:

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the ~~((utility owning or operating such))~~ facility operator and ~~((the))~~ a one-number locator service, and report the damage as required under section 20 of this act. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) ~~((The owner of the underground facilities damaged))~~ A facility operator notified in accordance with subsection (1) of this section shall arrange for repairs or relocation as soon as is practical, or ((may)) permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 10. RCW 19.122.055 and 2005 c 448 s 3 are each amended to read as follows:

(1)(a) Any excavator who fails to notify ~~((the))~~ a one-number locator service and causes damage to a hazardous liquid or gas ((pipeline)) underground

facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section ~~((shall))~~ must be deposited into the ~~((pipeline safety))~~ damage prevention account created in ~~((RCW 81.88.050))~~ section 12 of this act.

Sec. 11. RCW 19.122.070 and 2005 c 448 s 4 are each amended to read as follows:

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055~~((, and which violation results in damage to underground facilities,))~~ is subject to a civil penalty of not more than one thousand dollars for ~~((each violation. All penalties recovered in such actions shall be deposited in the general fund))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in section 12 of this act.

(2) Any excavator who willfully or maliciously damages a ~~((field-marked))~~ marked underground facility ~~((shall be))~~ is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known ~~((underground))~~ facility ~~((owners))~~ operators or ~~((the))~~ a one-number locator service, any damage to the underground facility ~~((shall be))~~ is deemed willful and malicious and ~~((shall be))~~ is subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

NEW SECTION. Sec. 12. A new section is added to chapter 19.122 RCW to read as follows:

The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in section 13 of this act. 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.

NEW SECTION. Sec. 13. A new section is added to chapter 19.122 RCW to read as follows:

The commission may use money deposited in the damage prevention account created in section 12 of this act to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to section 18 of this act deem appropriate for improving worker and public safety relating to excavation and underground facilities.

Sec. 14. RCW 19.122.075 and 2000 c 191 s 23 are each amended to read as follows:

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for ~~((each act))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

Sec. 15. RCW 19.122.080 and 1984 c 144 s 8 are each amended to read as follows:

The notification and marking provisions of this chapter may be waived for one or more designated persons by ~~((an underground))~~ a facility ~~((owner))~~ operator with respect to all or part of that ~~((underground))~~ facility ~~((owner's own))~~ operator's underground facilities.

Sec. 16. RCW 19.122.100 and 2005 c 448 s 6 are each amended to read as follows:

If charged with a violation of RCW 19.122.090, an equipment operator ~~((will be))~~ is deemed to have established an affirmative defense to such charges if:

- (1) The equipment operator was provided a valid excavation confirmation code;
- (2) The excavation was performed in an emergency situation;
- (3) The equipment operator was provided a false confirmation code by an identifiable third party; or
- (4) Notice of the excavation was not required under this chapter.

Sec. 17. RCW 19.122.110 and 2005 c 448 s 7 are each amended to read as follows:

Any person who intentionally provides an equipment operator with a false excavation confirmation code is guilty of a misdemeanor.

NEW SECTION. Sec. 18. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section, and is therefore exempt under RCW 39.29.040(1) from the requirements of chapter 39.29 RCW.

(2) The contracting entity must create a safety committee to:

- (a) Advise the commission and other state agencies, the legislature, and local governments on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety; and
- (b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

- (a) Local governments;
- (b) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
- (c) Contractors;

- (d) Excavators;
- (e) An electric utility subject to regulation under Title 80 RCW;
- (f) A consumer-owned utility, as defined in RCW 19.27A.140;
- (g) A pipeline company;
- (h) The insurance industry;
- (i) The commission; and
- (j) A telecommunications company.

(4) The safety committee must meet at least once every three months.

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81 RCW. The review committee must also include a member representing the insurance industry.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate.

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof.

(9) This section expires December 31, 2020.

NEW SECTION. Sec. 19. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may enforce the civil penalties authorized in RCW 19.122.070 or 19.122.075 when it receives written notification from the safety committee created under section 18 of this act indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to section 18 of this act that a violation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW 19.122.070 or 19.122.075. The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid for such enforcement.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court.

(4) This section expires December 31, 2020.

NEW SECTION. Sec. 20. A new section is added to chapter 19.122 RCW to read as follows:

(1) Facility operators and excavators who observe or cause damage to an underground facility must report the damage event to the commission.

(2) A nonpipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the damage event, or sooner if required by law, using the commission's virtual private damage information reporting tool (DIRT) report form, or other similar form if it reports:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or a facility operator;

(b) The date and time of the damage event;

(c) The address where the damage event occurred;

(d) The type of right-of-way, where the damage event occurred, including but not limited to city street, state highway, or utility easement;

(e) The type of underground facility damaged, including but not limited to pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or parts of poles or anchors below ground;

(f) The type of utility service or commodity the underground facility stores or conveys, including but not limited to electronic, telephonic or telegraphic communications, water, sewage, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;

(g) The type of excavator involved, including but not limited to contractors or facility operators;

(h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;

(i) The type of excavation being performed, including but not limited to drainage, grading, or landscaping;

(j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by a one-number locator service;

(k) If applicable:

(i) The person who located the underground facility, and their employer;

(ii) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;

(iii) Whether underground facilities were marked correctly;

(l) Whether an excavator experienced interruption of work as a result of the damage event;

(m) A description of the damage; and

(n) Whether the damage caused an interruption of underground facility service.

(4) The commission must use reported data to evaluate the effectiveness of the damage prevention program.

NEW SECTION. Sec. 21. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may investigate and enforce violations of RCW 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under section 18 of this act.

(2) If the commission's investigation of notifications received pursuant to section 19 of this act or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

(6) This section expires December 31, 2020.

NEW SECTION. Sec. 22. A new section is added to chapter 19.122 RCW to read as follows:

All penalties collected pursuant to section 21 of this act must be deposited in the damage prevention account created in section 12 of this act.

NEW SECTION. Sec. 23. RCW 19.122.060 (Exemption from notice and marking requirements for property owners) and 1984 c 144 s 6 are each repealed.

***NEW SECTION. Sec. 24.** *A new section is added to chapter 19.122 RCW to read as follows:*

Nothing in this act may be construed to classify a consumer-owned utility, as defined in RCW 19.27A.140, to be under the authority of the commission.

**Sec. 24 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 25. A new section is added to chapter 19.122 RCW to read as follows:

This act may be known and cited as the underground utility damage prevention act.

NEW SECTION. Sec. 26. By December 1, 2015, the utilities and transportation commission must report to the appropriate committees of the legislature on the effectiveness of the damage prevention program established

under chapter 19.122 RCW. The legislative report required under this section must include analysis of damage data reported under section 20 of this act.

NEW SECTION. Sec. 27. This act takes effect January 1, 2013.

Passed by the House April 14, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 5, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 6, 2011.

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

"I am returning herewith, without my approval as to section 24, Engrossed Second Substitute House Bill 1634 entitled:

"AN ACT Relating to underground utilities."

This bill strengthens our law for preventing damages to underground pipelines and other utilities during excavation. The bill provides the Utilities and Transportation Commission with the authority to take enforcement action for violations, to require reporting of damage to underground utilities, and to develop a stakeholder process to review violations and encourage better excavation practices. The bill provides a comprehensive damage prevention program for underground utilities.

Pursuant to the House floor colloquy on this bill, section 24 was intended to ensure that the bill would not result in regulation by the Utilities and Transportation Commission of consumer-owned utilities such as electric cooperatives, municipal utilities and public utility districts, except when such a utility damages an underground facility subject to this bill, in which case the Commission would have the authority to enforce the provisions of this act.

While the House floor colloquy clarifies legislative intent, the language in Section 24 could be read to exempt consumer-owned utilities from enforcement under the bill, and thereby prevent the Commission from taking enforcement action on underground utility damage caused by consumer-owner utilities. Since the language in this section does not change the statutory independence of consumer-owned utilities in setting their rates and determining their services, the section is not necessary.

For these reasons, I have vetoed section 24 of Engrossed Second Substitute House Bill 1634.

With the exception of section 24, Engrossed Second Substitute House Bill 1634 is approved."

CHAPTER 264

[Engrossed Substitute House Bill 1636]

SPORTS OFFICIALS—AMATEUR

AN ACT Relating to amateur sports officials; amending RCW 50.04.245; and adding a new section to chapter 50.04 RCW.

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

Sec. 1. RCW 50.04.245 and 2007 c 146 s 14 are each amended to read as follows:

(1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary staffing services company or services referral agency constitutes employment for the temporary staffing services company or services referral agency when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) The temporary staffing services company or services referral agency is considered the employer as defined in RCW 50.04.080.

(3) Services performed by amateur sports officials, on a contest-by-contest basis, for interscholastic and youth or adult recreational sports contests are not considered employment for a services referral agency if the agency is not responsible for payment to the amateur sports officials unless and until the agency is paid or reimbursed by a third party.

(4) For the purposes of this section:

(a) "Temporary staffing services company" means an individual or entity that engages in: Recruiting and hiring its own employees; finding other organizations that need the services of those employees; and assigning those employees on a temporary basis to perform work at or services for a client to support or supplement the client's workforces, or to provide assistance in special work situations, such as employee absences, skill shortages, and seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client. "Temporary staffing services company" does not include professional employer organizations as defined in RCW 50.04.298, permanent employee leasing, or permanent employee placement services.

(b) "Services referral agency" means an individual or entity other than a professional employer organization as defined in RCW 50.04.298 that is engaged in the business of offering the services of one or more individuals to perform specific tasks for a third party.

(c) "Amateur sports official" means any person who serves as a neutral participant in any sports contest where the players are not compensated including, but not limited to, an umpire, referee, judge, linesperson, scorekeeper, timekeeper, or organizer.

NEW SECTION. Sec. 2. A new section is added to chapter 50.04 RCW to read as follows:

Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" shall not include services performed by amateur sports officials, on a contest-by-contest basis, for interscholastic and youth or adult recreational sports contests. For purposes of this section, "amateur sports official" means any person who serves as a neutral participant in any sports contest where the players are not compensated, including but not limited to, an umpire, referee, judge, linesperson, scorekeeper, timekeeper, or organizer, and who is not otherwise employed by the sponsor of the sports contest.

Passed by the House February 22, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 265

[Substitute House Bill 1691]

EMBALMERS

AN ACT Relating to embalmers; and amending RCW 68.50.070 and 68.50.160.

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

Sec. 1. RCW 68.50.070 and 1959 c 23 s 1 are each amended to read as follows:

(1) Any ((sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall)) public agency required to provide for the disposition of human remains in any legal manner at public expense must surrender the ((dead bodies of persons required to be buried at the public expense;)) human remains to:

(a) Any physician or surgeon, to be ((by him)) used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students; or

(b) An accredited educational institution offering funeral services and embalming programs for use in training embalming students under the supervision of an embalmer licensed under chapter 18.39 RCW.

(2) If the deceased person ((during his last sickness)) requested to be buried, or if ((within thirty days after his death)) some person claiming to be a relative or a responsible officer of a ((church)) religious organization with which the deceased at the time of ((his)) death was affiliated requires the ((body)) remains to be buried, ((his body shall)) the remains must be buried, subject to the requirements of RCW 68.50.110 and 68.50.230.

Sec. 2. RCW 68.50.160 and 2010 c 274 s 602 are each amended to read as follows:

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The designated agent of the decedent as directed through a written document signed and dated by the decedent in the presence of a witness. The direction of the designated agent is sufficient to direct the type, place, and method of disposition.

(b) The surviving spouse or state registered domestic partner.

~~((b))~~ (c) The majority of the surviving adult children of the decedent.

~~((c))~~ (d) The surviving parents of the decedent.

~~((d))~~ (e) The majority of the surviving siblings of the decedent.

~~((e) A person acting as a representative of the decedent under the signed authorization of the decedent.)~~

(f) A court-appointed guardian for the person at the time of the person's death.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through ~~((e))~~ (f) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency or charitable organization provides the funds for the disposition of any human remains ~~((and the government agency elects to provide funds for cremation only))~~, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 266

[House Bill 1698]

RECREATIONAL FISHING

AN ACT Relating to recreational fishing opportunities; amending RCW 77.105.005, 77.105.020, 77.105.030, 77.105.050, and 77.105.160; adding a new section to chapter 77.105 RCW; and repealing RCW 77.105.040, 77.105.060, 77.105.070, 77.105.080, 77.105.090, 77.105.100, 77.105.110, 77.105.120, and 77.105.130.

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

Sec. 1. RCW 77.105.005 and 1993 sp.s. c 2 s 82 are each amended to read as follows:

(1) The legislature finds the sheltered waters of Puget Sound (waters east of the Sekiu river) have historically provided the citizens of the state with the safest and most convenient access to productive marine recreational fishing.

(2) The legislature ~~((finds that recreational fishing opportunities for salmon and marine bottomfish have been dwindling in recent years. It is important to restore diminished recreational fisheries and to enhance the salmon and marine bottomfish resource to assure sustained productivity))~~ further recognizes the economic value in restoring and rebuilding the recreational fishing opportunities in Puget Sound for salmon and marine bottomfish, and that these opportunities have declined in the past two decades. Investments made in recreational fishing

programs will repay the people of the state many times over in increased economic activity and in an improved quality of life.

(3) It is the intent of the legislature to improve recreational fishing opportunities in Puget Sound and Lake Washington from current levels and increase the economic benefits from the fishery, particularly recognizing the unique recreational experience provided by the winter salmon fishery. In addition, the legislature has determined that the number of angler trips expended in these waters is the measure of fishing opportunity.

Sec. 2. RCW 77.105.020 and 1993 sp.s. c 2 s 84 are each amended to read as follows:

(1) Consistent with available revenue, commission policies, tribal comanager agreements, and limitations of the endangered species act, the department, in consultation with the oversight committee created in RCW 77.105.160, shall adaptively manage the Puget Sound recreational salmon and marine fish enhancement program to maximize the benefits to the Puget Sound recreational fishery.

(2) The department has the following duties:

(a) The department shall (~~(; Develop a short term)~~) utilize a program of hatchery-based salmon enhancement (~~((using freshwater pond sites for the final rearing phase;))~~) and solicit support from cooperative projects, regional enhancement groups, and other supporting organizations(~~(;))~~) to improve recreational salmon fishing in Puget Sound.

(b) The department may conduct comprehensive research on resident and migratory salmon production opportunities(~~(; and conduct research)~~) on marine bottomfish production limitations, and on methods for artificial propagation of depleted marine bottomfish.

(~~Long term responsibilities of the department are to: Fully implement enhancement efforts for Puget Sound and Hood Canal resident salmon and marine bottomfish; identify opportunities to reestablish salmon runs into areas where they no longer exist; encourage naturally spawning salmon populations to develop to their fullest extent; and fully utilize hatchery programs to improve recreational fishing.~~)

(c) The program must facilitate continued and improved recreational fishing opportunities in Puget Sound and Lake Washington as measured by increased angler trips of participation. The coordinator, as identified in RCW 77.105.010, shall assist the oversight committee with development of recommendations for outcome-based goals and objectives to assess the effectiveness of the program.

(d) The director shall meet with the oversight committee each year to review and approve these goals and objectives.

(e) The director and oversight committee shall report annually to the commission on the goals of the program and the effectiveness of the program in meeting those goals. Objectives include, but are not limited to, an increase in salmon and bottomfish angler trips.

(f) The department and the oversight committee shall seek to reach consensus regarding program activities and expenditures. The department shall provide the oversight committee with a written explanation when the department expends funds from the recreational fisheries enhancement account that differs substantially from oversight committee recommendations.

(g) Consistent with RCW 43.01.036, the department and oversight committee shall make a joint report to the legislature on the effectiveness of this program in biennial reports. Reports must include the goals and objectives of the previous biennium and a determination of whether the goals and objectives were met and an explanation if the department did not meet these specific objectives.

Sec. 3. RCW 77.105.030 and 1993 sp.s. c 2 s 85 are each amended to read as follows:

The department (~~shall~~) may seek recommendations from persons who are expert on the planning and operation of programs for enhancement of recreational fisheries. The department (~~shall fully~~) may use the expertise of the University of Washington (~~college of fisheries~~) school of aquatic and fishery sciences and the sea grant program to develop research and enhancement programs.

NEW SECTION. Sec. 4. A new section is added to chapter 77.105 RCW to read as follows:

The department shall utilize artificial rearing of salmon to improve recreational salmon fishing in Puget Sound. In managing salmon, the department shall seek to develop and implement methods that will increase recreational angling opportunities. These methods may include, but are not limited to, the following tools:

(1) Utilization of salmon artificial rearing techniques that contribute to the recreational fisheries in Puget Sound, especially winter salmon fishing.

(2) Optimum use of hatchery salmon through expanded recreational mark-selective fisheries.

(3) Utilization of recreational salmon and marine fish enhancement program funds for catch monitoring when required to increase recreational mark-selective fisheries.

(4) Consideration of new catch and release recreational fisheries utilizing gear and methods known to minimize hooking mortality.

(5) Providing public information regarding angling opportunities and fishing methods.

Sec. 5. RCW 77.105.050 and 1993 sp.s. c 2 s 87 are each amended to read as follows:

The department (~~shall~~) may conduct research, develop methods, and implement programs for the artificial rearing and release of marine bottomfish species. (~~Lingcod, halibut, rockfish, and Pacific cod shall be the species of primary emphasis due to their importance in the recreational fishery.~~) Marine bottomfish species of importance in the recreational fishery are the primary emphasis. The department may use artificial habitats to restore and mitigate for degraded rockfish habitats and enhance recreational opportunities.

Sec. 6. RCW 77.105.160 and 2003 c 173 s 2 are each amended to read as follows:

(1) The Puget Sound recreational fisheries enhancement oversight committee is created. The director shall appoint at least seven members representing sport fishing (~~organizations~~) interests to the committee from a list of applicants, ensuring broad representation from the sport fishing community. Each member shall serve for a term of two years, and may be reappointed for

subsequent two-year terms at the discretion of the director. Members of the committee serve without compensation.

(2) The Puget Sound recreational fisheries enhancement oversight committee has the following duties:

(a) Advise the department on all aspects of the Puget Sound recreational fisheries enhancement program;

(b) Develop recommendations, with assistance from the coordinator, for outcome-based goals and objectives to assess the effectiveness of the program;

(c) Meet with the director each year to review these goals and objectives;

(d) Report annually with the director to the commission on the goals of the program and the effectiveness of the program in meeting those goals;

(e) Review and provide guidance on the annual budget for the recreational fisheries enhancement account;

~~((f))~~ (f) Select a chair of the committee. It is the chair's duty to coordinate with the department on all issues related to the Puget Sound recreational fisheries enhancement program;

~~((g))~~ (g) Meet at least quarterly with the department's coordinator as identified in RCW 77.105.010 of the Puget Sound recreational fisheries enhancement program;

~~((h))~~ (h) Review and comment on program documents and proposed production of salmon and other species; ~~(and~~

~~((i))~~ (i) Address other issues related to the purposes of the Puget Sound recreational fisheries enhancement program that are of interest to recreational fishers in Puget Sound; and

(j) Consistent with RCW 43.01.036, make a joint report with the department to the legislature each biennium on the status of the program.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

(1) RCW 77.105.040 (Delayed-release chinook salmon—Freshwater rearing) and 1993 sp.s. c 2 s 86;

(2) RCW 77.105.060 (Additional research) and 1993 sp.s. c 2 s 88;

(3) RCW 77.105.070 (Siting process for enhancement projects—Cooperation with other entities) and 1994 c 264 s 47 & 1993 sp.s. c 2 s 89;

(4) RCW 77.105.080 (Public awareness program) and 1993 sp.s. c 2 s 90;

(5) RCW 77.105.090 (Management of predators) and 1993 sp.s. c 2 s 91;

(6) RCW 77.105.100 (Plans to target hatchery-produced fish—Participation by fishing interests—Feasibility of increased survival and production of chinook and coho salmon) and 1993 sp.s. c 2 s 92;

(7) RCW 77.105.110 (Coordination of sport fishing program with wild stock initiative) and 1993 sp.s. c 2 s 93;

(8) RCW 77.105.120 (Increased recreational access to salmon and marine fish resources—Plans) and 1993 sp.s. c 2 s 94; and

(9) RCW 77.105.130 (Recreational fishing projects—Contracting with entities) and 1993 sp.s. c 2 s 95.

Passed by the House February 28, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 267

[Substitute House Bill 1710]

CAREER AND TECHNICAL EDUCATION—STRATEGIC PLAN

AN ACT Relating to creating a strategic plan for career and technical education; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The legislature continues to find that access to high quality career and technical education for middle and high school students is a key strategy for reducing the dropout rate and closing the achievement gap. Career and technical education increases the number of young people who obtain a meaningful postsecondary credential. Improving career and technical education is also an efficiency measure, because reductions in the dropout rate are associated with increased earnings for individuals and reduced societal costs in the criminal justice and welfare systems.

(2) The legislature further finds that much progress has been made since 2008 to enhance the rigor and relevance of career and technical education programs and to align and integrate instruction more closely with academic subjects, high demand fields, industry certification, and postsecondary education. Activities to support these objectives have included:

(a) Requiring all preparatory career and technical education programs to lead to industry certification or offer dual high school and college credit;

(b) Expanding state support for middle school career and technical education programs, especially in science, technology, and engineering;

(c) Providing support for schools to develop or upgrade programs in high demand fields and offer preapprenticeships;

(d) Developing model career and technical programs of study leading to industry credentials or degrees;

(e) Assisting school districts with identifying academic and career and technical education course equivalencies;

(f) Pilot-testing programs to integrate academic, career and technical, basic skills, and English as a second language instruction; and

(g) Developing performance measures and targets for accountability.

(3) Therefore, the legislature intends to ensure that progress will be continued and enhanced by providing a mechanism for monitoring continuous improvement in the rigor, relevance, and recognition of secondary career and technical education programs and improvement in students' access to these programs.

NEW SECTION. Sec. 2. (1) Within existing resources, the office of the superintendent of public instruction shall convene a working group to develop a statewide strategic plan for secondary career and technical education.

(2) The strategic plan must include:

(a) A vision statement, goals, and measurable annual objectives for continuous improvement in the rigor, relevance, recognition, and student access in career and technical education programs that build on current initiatives and progress in improving career and technical education, and are consistent with targets and performance measures required under the federal Carl Perkins act; and

(b) Recommended activities and strategies, in priority order, to accomplish the objectives and goals, including activities and strategies that:

- (i) Can be accomplished within current resources and funding formulas;
- (ii) Should receive top priority for additional investment; and
- (iii) Could be phased-in over the next ten years.

(3) In particular, the working group must examine:

(a) Proposed changes to high school graduation requirements and strategies to ensure that students continue to have opportunities to pursue career and technical education career and college pathways along with a meaningful high school diploma;

(b) How career and technical education courses can be used to meet the common core standards and how in turn the standards can be used to enhance the rigor of career and technical education;

(c) Ways to improve student access to high quality career and technical education courses and work experiences, not only in skill centers but also in middle school, comprehensive high schools, and rural areas;

(d) Ways to improve the transition from K-12 to community and technical college, university, and private technical college programs;

(e) Methods for replicating innovative middle and high schools that engage students in exploring careers, use project-based learning, and build meaningful partnerships with businesses and the community; and

(f) A framework for a series of career and technical education certifications that are: (i) Transferable between and among secondary schools and postsecondary institutions; and (ii) articulated across secondary and postsecondary levels so that students receive credit for knowledge and skills they have already mastered.

(4) The working group membership shall include:

(a) School district and skill center career and technical education directors and teachers and school guidance counselors;

(b) Community and technical college professional-technical faculty;

(c) At least one of each of the following: A school director, a principal, a counselor, and a parent;

(d) Representatives from industry, labor, tech prep consortia, local workforce development councils, private technical colleges, and the Washington association for career and technical education; and

(e) A representative from the workforce training and education coordinating board.

(5) The office of the superintendent of public instruction shall submit a progress report to the education committees of the legislature and to the quality education council by December 1, 2011. The final strategic plan, including priorities, recommendations, and measurable annual objectives for continuous improvement, is due by December 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 5, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 268

[Engrossed Substitute House Bill 1721]

STORM WATER POLLUTION—COAL TAR

AN ACT Relating to preventing storm water pollution from coal tar sealants; and adding a new chapter to Title 70 RCW.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Coal tar" means a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons in excess of ten thousand milligrams per kilogram. "Coal tar" includes, but is not limited to, refined coal tar, high temperature coal tar, coal tar pitch, or any substance identified by chemical abstract number 65996-93-2.

(2) "Coal tar pavement product" means a material that contains coal tar that is intended for use as a pavement sealant.

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

NEW SECTION. Sec. 2. (1) After January 1, 2012, no person may sell at wholesale or retail a coal tar pavement product that is labeled as containing coal tar.

(2) After July 1, 2013, a person may not apply a coal tar pavement product on a driveway or parking area.

(3) The department may issue a notice of corrective action to a person in violation of subsection (1) or (2) of this section.

(4) A city or county may adopt an ordinance providing for enforcement of the requirements of subsection (1) or (2) of this section. A city or county adopting an ordinance has jurisdiction concurrent with the department to enforce this section.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act constitute a new chapter in Title 70 RCW.

Passed by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 269

[Engrossed Substitute House Bill 1790]

SCHOOL DISTRICTS—BENEFITS—DIRECT PRACTICE AGREEMENTS

AN ACT Relating to school district contracts with direct practice health providers; and amending RCW 28A.400.280 and 28A.400.350.

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

Sec. 1. RCW 28A.400.280 and 1990 1st ex.s. c 11 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, school districts may provide employer fringe benefit contributions after October 1, 1990, only for basic benefits. However, school districts may continue payments under

contracts with employees or benefit providers in effect on April 13, 1990, until the contract expires.

(2) School districts may provide employer contributions after October 1, 1990, for optional benefit plans, in addition to basic benefits, only for employees included in pooling arrangements under this subsection. Optional (~~benefit plans~~) benefits may include direct agreements as defined in chapter 48.150 RCW, but may not include employee beneficiary accounts that can be liquidated by the employee on termination of employment. Optional benefit plans may be offered only if:

(a) The school district pools benefit allocations among employees using a pooling arrangement that includes at least one employee bargaining unit and/or all nonbargaining group employees;

(b) Each full-time employee included in the pooling arrangement is offered basic benefits, including coverage for dependents, without a payroll deduction for premium charges;

(c) Each full-time employee included in the pooling arrangement, regardless of the number of dependents receiving basic coverage, receives the same additional employer contribution for other coverage or optional benefits; and

(d) For part-time employees included in the pooling arrangement, participation in optional benefit plans shall be governed by the same eligibility criteria and/or proration of employer contributions used for allocations for basic benefits.

(3) Savings accruing to school districts due to limitations on benefit options under this section shall be pooled and made available by the districts to reduce out-of-pocket premium expenses for employees needing basic coverage for dependents. School districts are not intended to divert state benefit allocations for other purposes.

Sec. 2. RCW 28A.400.350 and 2001 c 266 s 2 are each amended to read as follows:

(1) The board of directors of any of the state's school districts or educational service districts may make available liability, life, health, health care, accident, disability, and salary protection or insurance, direct agreements as defined in chapter 48.150 RCW, or any one of, or a combination of the (~~enumerated~~) types of (~~insurance~~) employee benefits enumerated in this subsection, or any other type of insurance or protection, for the members of the boards of directors, the students, and employees of the school district or educational service district, and their dependents. Such coverage may be provided by contracts with private carriers, with the state health care authority after July 1, 1990, pursuant to the approval of the authority administrator, or through self-insurance or self-funding pursuant to chapter 48.62 RCW, or in any other manner authorized by law. Any direct agreement must comply with RCW 48.150.050.

(2) Whenever funds are available for these purposes the board of directors of the school district or educational service district may contribute all or a part of the cost of such protection or insurance for the employees of their respective school districts or educational service districts and their dependents. The premiums on such liability insurance shall be borne by the school district or educational service district.

After October 1, 1990, school districts may not contribute to any employee protection or insurance other than liability insurance unless the district's employee benefit plan conforms to RCW 28A.400.275 and 28A.400.280.

(3) For school board members, educational service district board members, and students, the premiums due on such protection or insurance shall be borne by the assenting school board member, educational service district board member, or student. The school district or educational service district may contribute all or part of the costs, including the premiums, of life, health, health care, accident or disability insurance which shall be offered to all students participating in interschool activities on the behalf of or as representative of their school, school district, or educational service district. The school district board of directors and the educational service district board may require any student participating in extracurricular interschool activities to, as a condition of participation, document evidence of insurance or purchase insurance that will provide adequate coverage, as determined by the school district board of directors or the educational service district board, for medical expenses incurred as a result of injury sustained while participating in the extracurricular activity. In establishing such a requirement, the district shall adopt regulations for waiving or reducing the premiums of such coverage as may be offered through the school district or educational service district to students participating in extracurricular activities, for those students whose families, by reason of their low income, would have difficulty paying the entire amount of such insurance premiums. The district board shall adopt regulations for waiving or reducing the insurance coverage requirements for low-income students in order to assure such students are not prohibited from participating in extracurricular interschool activities.

(4) All contracts for insurance or protection written to take advantage of the provisions of this section shall provide that the beneficiaries of such contracts may utilize on an equal participation basis the services of those practitioners licensed pursuant to chapters 18.22, 18.25, 18.53, 18.57, and 18.71 RCW.

Passed by the House April 15, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 270

[Substitute House Bill 1829]

OFFICE OF NATIVE EDUCATION

AN ACT Relating to creating an Indian education division in the office of the superintendent of public instruction; adding new sections to chapter 28A.300 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds:

(1) Leadership, technical assistance, and advocacy is important to promoting the academic success of all students, particularly including American Indian and Alaska Native students;

(2) American Indian and Alaska Native students make up two and one-half percent of the total student population in the state and twenty-five percent or more of the student population in fifty-seven schools across the state;

(3) The annual dropout rate for American Indian and Alaska Native students has hovered around ten or eleven percent over the past three school years and, while the on-time graduation rate for these students has improved between the 2006-07 and 2008-09 school years, it is still only fifty-two and seven-tenths percent; and

(4) Despite the passage of House Bill No. 1495 in 2005, with its goal of educating citizens of the state about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations, and the contribution of American Indians and Alaska Natives to the state, that goal has yet to be achieved in many schools.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

(1) To the extent funds are available, an Indian education division, to be known as the office of Native education, is created within the office of the superintendent of public instruction. The superintendent shall appoint an individual to be responsible for the office of Native education.

(2) To the extent state funds are available, with additional support of federal and local funds where authorized by law, the office of Native education shall:

(a) Provide assistance to school districts in meeting the educational needs of American Indian and Alaska Native students;

(b) Facilitate the development and implementation of curricula and instructional materials in native languages, culture and history, and the concept of tribal sovereignty pursuant to RCW 28A.320.170;

(c) Provide assistance to districts in the acquisition of funding to develop curricula and instructional materials in conjunction with native language practitioners and tribal elders;

(d) Coordinate technical assistance for public schools that serve American Indian and Alaska Native students;

(e) Seek funds to develop, in conjunction with the Washington state native American education advisory committee, and implement the following support services for the purposes of both increasing the number of American Indian and Alaska Native teachers and principals and providing continued professional development for educational assistants, teachers, and principals serving American Indian and Alaska Native students:

(i) Recruitment and retention;

(ii) Academic transition programs;

(iii) Academic financial support;

(iv) Teacher preparation;

(v) Teacher induction; and

(vi) Professional development;

(f) Facilitate the inclusion of native language programs in school districts' curricula;

(g) Work with all relevant agencies and committees to highlight the need for accurate, useful data that is appropriately disaggregated to provide a more accurate picture regarding American Indian and Alaska Native students; and

(h) Report to the governor, the legislature, and the governor's office of Indian affairs on an annual basis, beginning in December 2012, regarding the state of Indian education and the implementation of all state laws regarding Indian education, specifically noting system successes and accomplishments, deficiencies, and needs.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.300 RCW to read as follows:

The Native education public-private partnership account is created in the custody of the state treasurer. The purpose of the account is to support the activities of the office of Native education within the office of the superintendent of public instruction under section 2 of this act. Receipts from any appropriations made by the legislature for the purposes of section 2 of this act, federal funds, gifts or grants from the private sector or foundations, and other sources must be deposited into the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 271

[Substitute House Bill 1854]

REGIONAL FIRE PROTECTION SERVICE AUTHORITIES—ANNEXATION

AN ACT Relating to annexation of territory by regional fire protection service authorities; amending RCW 52.26.100 and 84.52.044; and adding a new section to chapter 52.26 RCW.

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

Sec. 1. RCW 52.26.100 and 2006 c 200 s 7 are each amended to read as follows:

(1) Except as otherwise provided in the regional fire protection service authority plan, all powers, duties, and functions of a participating fire protection jurisdiction pertaining to fire protection and emergency services shall be transferred to the regional fire protection service authority on its creation date or on the effective date that a fire protection jurisdiction is subsequently annexed into an authority.

(2)(a) Except as otherwise provided in the regional fire protection service authority plan, and on the creation date of the regional fire protection service authority or, in the case of a fire protection jurisdiction, on the effective date that the fire protection jurisdiction is subsequently annexed into an authority, all reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to fire protection and emergency services powers, functions, and duties shall be delivered to the regional fire protection service authority; all real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the fire protection and emergency services

powers, functions, and duties shall be transferred to the regional fire protection service authority; and all funds, credits, or other assets held by the participating fire protection jurisdiction in connection with the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(b) Except as otherwise provided in the regional fire protection service authority plan, any appropriations made to the participating fire protection jurisdiction for carrying out the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(c) Except as otherwise provided in the regional fire protection service authority plan, 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 governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) Except as otherwise provided in the regional fire protection service authority plan, all rules and all pending business before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service authority, and all existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall not affect the validity of any act performed before creation of the regional fire protection service authority.

(5) If apportionments of budgeted funds are required because of the transfers, the treasurer for the authority shall certify the apportionments.

(6)(a) Subject to (c) of this subsection, all employees of the participating fire protection jurisdictions are transferred to the jurisdiction of the regional fire protection service authority on its creation date or, in the case of a fire protection jurisdiction, on the effective date that the fire protection jurisdiction is subsequently annexed into an authority. Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of a participating fire protection jurisdiction, including rights to:

- (i) Compensation at least equal to the level at the time of transfer;
- (ii) Retirement, vacation, sick leave, and any other accrued benefit;
- (iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) If any or all of the participating fire protection jurisdictions provide for civil service in their fire departments, the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions must negotiate regarding the establishment of a civil service system within the authority. This subsection does not apply if none of the participating fire protection districts provide for civil service.

(c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law.

NEW SECTION. Sec. 2. A new section is added to chapter 52.26 RCW to read as follows:

(1) A fire protection jurisdiction that is adjacent to the boundary of a regional fire protection service authority is eligible for annexation by the authority.

(2) An annexation is initiated by the adoption of a resolution by the governing body of a fire protection jurisdiction requesting the annexation. The resolution requesting annexation must then be filed with the governing board of the authority that is requested to annex the fire protection jurisdiction.

(3) Except as otherwise provided in the regional fire protection service authority plan, on receipt of the resolution requesting annexation, the governing board of the authority may adopt a resolution amending its plan to establish terms and conditions of the requested annexation and submit the resolution and plan amendment to the fire protection jurisdiction requesting annexation. An election to authorize the annexation may be held only if the governing body of the fire protection jurisdiction seeking annexation adopts a resolution approving both the annexation and the related plan amendment.

(4)(a) An annexation is authorized if the voters in the fire protection jurisdiction proposed to be annexed approve by a simple majority vote a single ballot measure approving the annexation and related plan amendment.

(b) An annexation is effective on the date specified in the ballot measure. In the event the ballot measure does not specify an effective date, the effective date is on the subsequent January 1st or July 1st, whichever occurs first.

Sec. 3. RCW 84.52.044 and 2004 c 129 s 20 are each amended to read as follows:

(1) If a fire protection district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular property tax levies of the fire protection district are limited as follows:

(a) The regular levy of the district under RCW 52.16.130 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(a);

(b) The levy of the district under RCW 52.16.140 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(b); and

(c) The levy of the district under RCW 52.16.160 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under RCW 52.26.140(1)(c).

(2) If a city or town is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levies of the city or town shall not exceed the applicable rates provided in RCW 27.12.390, 52.04.081,

and 84.52.043(1) less the aggregate rates of any regular levies made by the authority under RCW 52.26.140(1).

(3) If a port district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levy of the port district under RCW 53.36.020 shall not exceed forty-five cents per thousand dollars of assessed value of taxable property in the district less the aggregate rates of any regular levies imposed by the authority under RCW 52.26.140(1).

(4) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority or annexed into a regional fire protection service authority.

Passed by the House March 5, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 272

[Substitute House Bill 1897]

RURAL MOBILITY GRANT PROGRAM

AN ACT Relating to establishing a rural mobility grant program; reenacting and amending RCW 43.84.092; adding a new section to chapter 46.68 RCW; and adding a new section to chapter 47.66 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.68 RCW to read as follows:

(1) The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under section 2 of this act.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

NEW SECTION. Sec. 2. A new section is added to chapter 47.66 RCW to read as follows:

(1) The department shall establish a rural mobility grant program. The purpose of the grant program is to aid small cities and rural areas, as identified in the "Summary of Public Transportation - 2008" published by the department or subsequent versions published by the department.

(a) Fifty percent of the money appropriated for the rural mobility grant program must go to noncompetitive grants that must be distributed to the transit systems serving small cities and rural areas in a manner similar to past disparity equalization programs.

(b) Fifty percent of the money appropriated for the rural mobility grant program must go to competitive grants to providers of rural mobility service in areas not served or underserved by transit agencies.

(2) The department may establish an advisory committee to carry out the mandates of this section.

(3) The department must report annually to the transportation committees of the legislature on the status of any grants projects funded by the program created under this section.

(4) During the 2011-2013 fiscal biennium, the department shall, with money appropriated for the competitive grants program under subsection (1)(b) of this section, implement a pilot project to provide agricultural workers with enhanced transit opportunities through the establishment of one or more vanpool programs. The pilot project must, at a minimum, provide appropriate vehicles, insurance, and maintenance, and may charge an appropriate fee, as determined by the department, to the riders in a vanpool.

Sec. 3. RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp.s. c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145 s 11 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington

University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the

teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Passed by the House March 5, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 273

[Substitute House Bill 1899]

PUBLIC RECORDS VIOLATIONS—PENALTIES

AN ACT Relating to penalties for public records violations; reenacting and amending RCW 42.56.550; and prescribing penalties.

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

Sec. 1. RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are each reenacted and amended to read as follows:

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in

which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount (~~not less than five dollars and~~) not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

Passed by the House March 1, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 274

[Second Substitute House Bill 1909]

COMMUNITY AND TECHNICAL COLLEGES—INNOVATION—FUNDING

AN ACT Relating to creating a funding mechanism to promote innovation at community and technical colleges; amending RCW 28B.15.031 and 28B.15.100; reenacting and amending RCW 43.79A.040; adding a new section to chapter 28B.50 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the community and technical college system mission to ensure affordable access to higher education geographically distributed throughout the state is aligned with innovative approaches to learning and substantial efficiencies that have been implemented

since the legislature established the system in 1967. Systemic approaches include a common accounting system, a common administrative computing system, a single system budget request for operating and capital expenses, and common course numbering. Innovative approaches include the system's e-learning platform, the adoption of open educational resources, and the adoption of lecture-capture tools that allow students to replay lectures, review classroom materials, and distribute outstanding instruction via the web anytime, anywhere.

(2) It is the intent of the legislature to further enhance the community and technical college system by making the maximum use of technologies to:

(a) Help dismantle the barriers of geographic isolation, cost, competing demands of work and family life, and past educational failure;

(b) Create a system for learning that is welcoming to all, easy to enter and use, and tailored to the needs of each learner; and

(c) Foster personal relationships and support all students and their families to learn and thrive.

Sec. 2. RCW 28B.15.031 and 2003 c 232 s 2 are each amended to read as follows:

(1) The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of three and one-half percent of operating fees shall be retained by the institutions for the purposes of RCW 28B.15.820.

(2) In addition to the three and one-half percent of operating fees retained by the institutions under subsection (1) of this section, up to three percent of operating fees charged to students at community and technical colleges shall be transferred to the community and technical college innovation account for the implementation of the college board's strategic technology plan in section 3 of this act. The percentage to be transferred to the community and technical college innovation account shall be determined by the college board each year but shall not exceed three percent of the operating fees collected each year.

(3) Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.50 RCW to read as follows:

(1) The community and technical college innovation account is created in the custody of the state treasurer. All receipts from operating fees in RCW 28B.15.031(2) must be deposited into the account. Expenditures from the account may be used only as provided in subsection (2) of this section. Only the director of the college board or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the community and technical college innovation account may be used solely to:

(a) Pay and secure the payment of the principal of and interest on financing contracts, such as certificates of participation issued for the innovation account under chapter 39.94 RCW and authorized by the legislature; and

(b) Implement the college board's strategic technology plan to improve student achievement, student services, and increase systemwide administrative efficiencies. The college board must approve projects under the strategic technology plan to improve student achievement, student services, and increase systemwide administrative efficiencies before the director authorizes expenditures to be made. For large enterprise resource planning projects, the college board shall develop a technical and operational business plan and submit it to the legislature for approval before the project can be implemented.

(3) Consistent with the implementation of the strategic technology plan, the college board and the community and technical colleges shall engage in substantial business process reengineering and adopt systemwide approaches to admissions, financial aid, student identification numbers, student transcripts, and other systemwide processes.

(4) If the community and technical college system pursues an enterprise resource planning solution, they shall consider adoption of existing solutions already deployed at institutions of higher education in the state; short and long-term total costs of ownership; opportunities for partnerships, collaboration, coordination and consolidation with other entities in higher education; technical flexibility; and other requirements that support costs efficiencies. If the college board adopts a plan for an enterprise solution that is not coordinated with other institutions of higher education, authorization of expenditure of funds by the legislature must be approved by the office of financial management.

Sec. 4. RCW 43.79A.040 and 2010 1st sp.s. c 19 s 22, 2010 1st sp.s. c 13 s 4, 2010 1st sp.s. c 9 s 6, 2010 c 222 s 4, and 2010 c 215 s 7 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in

all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, and the reading achievement account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer

pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 5. RCW 28B.15.100 and 2003 c 232 s 6 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. For the governing boards of the state universities, the regional universities, and The Evergreen State College, the total of all fees shall be rounded to the nearest whole dollar amount: **PROVIDED,** That such tuition fees shall be established in accordance with 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 except for students registered at community colleges, 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 by the House March 2, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 275

[Engrossed House Bill 1969]

PROPERTY TAXES—EXEMPTION—FLOOD CONTROL ZONE DISTRICTS

AN ACT Relating to the exemption of flood control zone districts that are coextensive with a county from certain limitations upon regular property tax levies; amending RCW 84.52.010 and

84.52.043; adding a new section to chapter 84.52 RCW; creating a new section; and providing an expiration date.

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

Sec. 1. RCW 84.52.010 and 2009 c 551 s 7 are each amended to read as follows:

(1) Except as is permitted under RCW 84.55.050, all taxes ~~((shall))~~ must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, ~~((shall))~~ must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county ~~((shall))~~ must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor ~~((shall))~~ must recompute and establish a consolidated levy in the following manner:

~~((+))~~ (a) The full certified rates of tax levy for state, county, county road district, and city or town purposes ~~((shall))~~ must be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy ~~((shall))~~ takes precedence over all other levies and ~~((shall))~~ may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, ~~((and))~~ 84.52.140, and the protected portion of the levy under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies ~~((shall))~~ must be reduced as follows:

~~((+))~~ (i) The protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 ~~((shall))~~ must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or ~~((shall))~~ must be eliminated;

~~((+))~~ (iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district that is protected under RCW 84.52.125 ~~((shall))~~ must be reduced until the combined

rate no longer exceeds one percent of the true and fair value of any property or ~~((shall))~~ must be eliminated;

~~((e))~~ (iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

~~((d))~~ (v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

~~((e))~~ (vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 ~~((shall))~~ must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or ~~((shall))~~ must be eliminated;

~~((f))~~ (vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, ~~((shall))~~ must be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or ~~((shall))~~ must be eliminated; and

~~((g))~~ (viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 ~~((shall))~~ must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated.

~~((2))~~ (b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property ~~((shall))~~ must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

~~((a))~~ (i) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 ~~((shall))~~ must be reduced on a pro rata basis or eliminated;

~~((b))~~ (ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts ~~((shall))~~ that have a population of seven hundred seventy-five thousand or more must be reduced on a pro rata basis or eliminated;

~~((c))~~ (iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per

thousand dollars of assessed valuation levies for public hospital districts, ~~((shall))~~ must be reduced on a pro rata basis or eliminated;

~~((iv))~~ (iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, ~~((shall))~~ must be reduced on a pro rata basis or eliminated;

~~((v))~~ (v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) ~~((shall))~~ must be reduced on a pro rata basis or eliminated; and

~~((vi))~~ (vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, ~~((shall))~~ must be reduced on a pro rata basis or eliminated.

Sec. 2. RCW 84.52.043 and 2009 c 551 s 6 are each amended to read as follows:

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named ~~((shall be))~~ are as follows:

(1) Levies of the senior taxing districts ~~((shall be))~~ are as follows: (a) The levy by the state ~~((shall))~~ may not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county ~~((shall))~~ may not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district ~~((shall))~~ may not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town ~~((shall))~~ may not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, ~~((shall))~~ may not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection ~~((shall))~~ do not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies

for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; (i) the portions of levies by fire protection districts that are protected under RCW 84.52.125; ~~((and))~~ (j) levies by counties for transit-related purposes under RCW 84.52.140; and (k) the protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county.

NEW SECTION. Sec. 3. A new section is added to chapter 84.52 RCW to read as follows:

A flood control zone district that is coextensive with a county may protect the levy under RCW 86.15.160(1) from prorationing under RCW 84.52.010(3)(b)(ii) by imposing up to a total of twenty-five cents per thousand dollars of assessed value of the tax levy authorized under RCW 86.15.160 outside of the five dollars and ninety cents per thousand dollars of assessed value limitation under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(3)(b)(ii).

NEW SECTION. Sec. 4. This act applies to taxes levied for collection in 2012 through 2017.

NEW SECTION. Sec. 5. This act expires January 1, 2018.

Passed by the House April 18, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 276

[Engrossed Substitute Senate Bill 5186]

MISDEMEANOR CRIME—SKIING—AREA CLOSED TO PUBLIC

AN ACT Relating to skiing in an area closed to the public; adding a new section to chapter 79A.45 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 79A.45 RCW to read as follows:

A person is guilty of a misdemeanor if the person knowingly skis in an area or on a ski trail, owned or controlled by a ski area operator, that is closed to the public and that has signs posted indicating the closure.

Passed by the Senate April 15, 2011.

Passed by the House April 6, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 277

[Substitute Senate Bill 5192]

SHORELINE MANAGEMENT ACT—NOTIFICATIONS AND APPEALS

AN ACT Relating to provisions for notifications and appeals timelines under the shoreline management act; amending RCW 36.70A.290, 90.58.090, 90.58.140, and 90.58.180; and reenacting and amending RCW 90.58.190.

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

Sec. 1. RCW 36.70A.290 and 2010 c 211 s 8 are each amended to read as follows:

(1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication (~~by the legislative bodies of the county or city~~) as provided in (a) through (c) of this subsection.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the (~~local government~~) department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved (~~by the department of ecology~~). For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the (~~local government~~) department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved (~~by the department of ecology~~).

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

Sec. 2. RCW 90.58.090 and 2003 c 321 s 3 are each amended to read as follows:

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes (~~(—The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment)~~) by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide (~~written~~) notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the

purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

(a) Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date.

(b) The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

(8) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments. If the notice is for a local government that does not plan under RCW 36.70A.040, the department must, on the day the notice is

published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

Sec. 3. RCW 90.58.140 and 2010 c 210 s 36 are each amended to read as follows:

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date ~~((of receipt))~~ the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of ~~((receipt))~~ filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of ~~((receipt))~~ filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date ~~((of receipt))~~ the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to ~~((subsections))~~ (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be ~~((transmitted to))~~ filed with the

department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of ~~((receipt))~~ filing of the decision.

(a) With regard to a permit other than a permit governed by subsection (10) of this section, "date of ~~((receipt~~ as used herein refers to the date that the applicant receives written notice from the department that the department has received the decision. With regard to a permit for a variance or a conditional use, "date of receipt" means the date a local government or applicant receives the written decision of the department rendered on the permit pursuant to subsection (10) of this section. For the purposes of this subsection, the term "date of receipt" has the same meaning as provided in RCW 43.21B.001)) filing" as used in this section refers to the date of actual receipt by the department of the local government's decision.

(b) With regard to a permit for a variance or a conditional use governed by subsection (10) of this section, "date of filing" means the date the decision of the department is transmitted by the department to the local government.

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) of this subsection.

(d) The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program~~(s)~~ must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to

protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (a)(i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

Sec. 4. RCW 90.58.180 and 2010 c 210 s 37 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may (~~(-except as otherwise provided in chapter 43.21L RCW,)~~) seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of ~~((receipt))~~ filing of the decision as ~~((provided for))~~ defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date ~~((of receipt))~~ the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of

this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board.

Sec. 5. RCW 90.58.190 and 2010 c 211 s 14 and 2010 c 210 s 38 are each reenacted and amended to read as follows:

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition ~~((within sixty days from the date of the department's written notice to the local government of the department's final decision to approve or reject a proposed master program or master program amendment,))~~ as provided in RCW 36.70A.290. ~~((The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2).))~~

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the

internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of the growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date ~~((of the department's written notice to the local government of the department's final decision to approve or reject a proposed master program or master program amendment. The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2))~~ that the department publishes notice of its final decision under RCW 90.58.090(8).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

Passed by the Senate April 15, 2011.
Passed by the House April 6, 2011.
Approved by the Governor May 5, 2011.
Filed in Office of Secretary of State May 6, 2011.

CHAPTER 278

[Substitute Senate Bill 5239]

FEDERAL FOREST REVENUE—ALLOCATION TO PUBLIC SCHOOLS

AN ACT Relating to the allocation method used for the distribution of federal forest revenue to public schools; amending RCW 28A.520.020; creating a new section; and providing an effective date.

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

Sec. 1. RCW 28A.520.020 and 1991 sp.s. c 13 s 113 are each amended to read as follows:

(1) There shall be a fund known as the federal forest revolving account. The state treasurer, who shall be custodian of the revolving account, shall deposit into the revolving account the funds for each county received by the state in accordance with Title 16, section 500, United States Code. The state treasurer shall distribute these moneys to the counties according to the determined proportional area. The county legislative authority shall expend fifty percent of the money for the benefit of the public roads and other public purposes as authorized by federal statute or public schools of such county and not otherwise. Disbursements by the counties of the remaining fifty percent of the money shall be as authorized by the superintendent of public instruction, or the superintendent's designee, and shall occur in the manner provided in subsection (2) of this section.

(2) No later than thirty days following receipt of the funds from the federal government, the superintendent of public instruction shall apportion moneys distributed to counties for schools to public school districts in the respective counties in proportion to the number of resident full-time equivalent students enrolled in each public school district to the number of resident full-time equivalent students enrolled in public schools in the county. In apportioning these funds, the superintendent of public instruction shall utilize the October enrollment count.

(3) If the amount received by any public school district pursuant to subsection (2) of this section is less than the basic education allocation to which the district would otherwise be entitled, the superintendent of public instruction shall apportion to the district, in the manner provided by RCW 28A.510.250, an amount which shall be the difference between the amount received pursuant to subsection (2) of this section and the basic education allocation to which the district would otherwise be entitled.

(4) All federal forest funds shall be expended in accordance with the requirements of Title 16, section 500, United States Code, as now existing or hereafter amended.

(5) The definition of resident student for purposes of this section shall be based on rules adopted by the superintendent of public instruction, which shall consider and address the impact of alternative learning experience students on federal forest funds distribution.

NEW SECTION. Sec. 2. The superintendent of public instruction shall adopt rules to implement section 1 of this act that take effect September 1, 2011.

NEW SECTION. Sec. 3. Section 1 of this act takes effect September 1, 2011.

Passed by the Senate April 15, 2011.

Passed by the House April 4, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 279

[Substitute Senate Bill 5350]

SOLID WASTE—UNLAWFUL DUMPING

AN ACT Relating to the unlawful dumping of solid waste; and amending RCW 70.95.240.

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

Sec. 1. RCW 70.95.240 and 2001 c 139 s 2 are each amended to read as follows:

(1) Except as otherwise provided in this section or at a solid waste disposal site for which there is a valid permit, 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)) is 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)).

(2) This section 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;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; 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))~~ (3)(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)(i) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. ~~((The person))~~

(ii) A person found to have littered in an amount greater than one cubic foot, but less than one cubic yard, shall also pay a litter cleanup restitution payment ((equal to)). This payment must be the greater of twice the actual cost of ((cleanup)) removing and properly disposing of the litter, or fifty dollars per cubic foot of litter((, whichever is greater)).

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not

entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to ~~((or in lieu of part or all of))~~ the litter cleanup restitution payment, order the person to ~~((pick up and))~~ remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section~~(:)~~ if the person ~~((cleans up))~~ removes and properly disposes of the litter.

(c)(i) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. ~~((The person))~~

(ii) A person found to have littered in an amount greater than one cubic yard shall also pay a litter cleanup restitution payment ~~((equal to))~~. This payment must be the greater of twice the actual cost of ~~((cleanup))~~ removing and properly disposing of the litter, or one hundred dollars per cubic foot of litter~~((, whichever is greater))~~.

(iii) The court shall distribute one-half of the restitution payment to the landowner where the littering occurred and one-half of the restitution payment to the jurisdictional health department investigating the incident. If the landowner provided written permission authorizing the littering on his or her property or assisted a person with littering on the landowner's property, the landowner is not entitled to any restitution ordered by the court and the full litter cleanup restitution payment must be provided to the jurisdictional health department investigating the incident.

(iv) A jurisdictional health department receiving all or a portion of a litter cleanup restitution payment must use the payment as follows:

(A) One-half of the payment may be used by the jurisdictional health department in the fulfillment of its responsibilities under this chapter; and

(B) One-half of the payment must be used to assist property owners located within the jurisdiction of the health department with the removal and proper disposal of litter in instances when the person responsible for the illegal dumping of the solid waste cannot be determined.

(v) The court may, in addition to ~~((or in lieu of part or all of))~~ the litter cleanup restitution payment, order the person to ~~((pick up and))~~ remove and properly dispose of the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section~~(:)~~ if the person ~~((cleans up))~~ removes and properly disposes of the litter.

~~((4))~~ (4) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(5) When enforcing this section, the enforcing authority must take reasonable action to determine and identify the person responsible for illegally dumping solid waste before requiring the owner or lessee of the property where illegal dumping of solid waste has occurred to remove and properly dispose of the litter on the site.

Passed by the Senate April 18, 2011.

Passed by the House April 1, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 280

[Substitute Senate Bill 5392]

K-12 EDUCATION—TECHNOLOGY LITERACY AND FLUENCY

AN ACT Relating to including technology as an educational core concept and principle; amending RCW 28A.150.210; 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 technology can be effectively integrated into other K-12 core subjects that students are expected to know and be able to do. Integration of knowledge and skills in technology literacy and fluency into other subjects will engage and motivate students to explore high-demand careers, such as engineering, mathematics, computer science, communication, art, entrepreneurship, and others; fields in which skilled individuals will create the new ideas, new products, and new industries of the future; and fields that demand the collaborative information skills and technological fluency of digital citizenship.

Sec. 2. RCW 28A.150.210 and 2009 c 548 s 103 are each amended to read as follows:

A basic education is an evolving program of instruction that is intended to provide students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives. Additionally, the state of Washington intends to provide for a public school system that is able to evolve and adapt in order to better focus on strengthening the educational achievement of all students, which includes high expectations for all students and gives all students the opportunity to achieve personal and academic success. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for every student to develop the knowledge and skills essential to:

(1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and

participation in representative government; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate technology literacy and fluency as well as different experiences and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

NEW SECTION. Sec. 3. This act takes effect September 1, 2011.

Passed by the Senate April 18, 2011.

Passed by the House April 5, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 281

[Engrossed Substitute Senate Bill 5748]

COTTAGE FOOD OPERATIONS

AN ACT Relating to cottage food operations; amending RCW 69.07.120 and 69.07.100; and adding a new chapter to Title 69 RCW.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

(2) "Cottage food products" means nonpotentially hazardous baked goods; jams, jellies, preserves, and fruit butters as defined in 21 C.F.R. Sec. 150 as it existed on the effective date of this section; and other nonpotentially hazardous foods identified by the director in rule.

(3) "Department" means the department of agriculture.

(4) "Director" means the director of the department.

(5) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

(6) "Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

(7) "Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

(8) "Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

NEW SECTION. Sec. 2. (1) The director may adopt, by rule, requirements for cottage food operations. These requirements may include, but are not limited to:

- (a) The application and renewal of permits under section 3 of this act;
- (b) Inspections as provided under section 4 of this act;
- (c) Sanitary procedures;
- (d) Facility, equipment, and utensil requirements;
- (e) Labeling specificity beyond the requirements of this section;
- (f) Requirements for clean water sources and waste and wastewater disposal; and
- (g) Requirements for washing and other hygienic practices.

(2) A cottage food operation must package and properly label for sale to the consumer any food it produces, and the food may not be repackaged, sold, or used as an ingredient in other foods by a food processing plant, or sold by a food service establishment.

(3) A cottage food operation must place on the label of any food it produces or packages, at a minimum, the following information:

- (a) The name and address of the business of the cottage food operation;
- (b) The name of the cottage food product;
- (c) The ingredients of the cottage food product, in descending order of predominance by weight;
- (d) The net weight or net volume of the cottage food product;
- (e) Allergen labeling as specified by the director in rule;
- (f) If any nutritional claim is made, appropriate labeling as specified by the director in rule;
- (g) The following statement printed in at least the equivalent of eleven-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been subject to standard inspection criteria."

(4) Cottage food products may only be sold directly to the consumer and may not be sold by internet, mail order, or for retail sale outside the state.

(5) Cottage food products must be stored only in the primary domestic residence.

NEW SECTION. Sec. 3. (1) All cottage food operations must be permitted annually by the department on forms developed by the department. All permits and permit renewals must be made on forms developed by the director and be accompanied by an inspection fee as provided in section 4 of this act, a seventy-five dollar public health review fee, and a thirty dollar processing fee. All fees must be deposited into the food processing inspection account created in RCW 69.07.120.

(2) In addition to the provision of any information required by the director on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a cottage food operation must also provide documentation that all individuals to be involved in the preparation of cottage foods have secured a food and beverage service worker's permit under chapter 69.06 RCW.

(3) All cottage food operations permitted under this section must include a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the director the right to enter the domestic residence housing the cottage food operation during normal business

hours, or at other reasonable times, for the purposes of inspections under this chapter.

NEW SECTION. Sec. 4. (1) The permitted area of all cottage food operations must be inspected for basic hygiene by the director both before initial permitting under section 3 of this act and annually after initial permitting. In addition, the director may inspect the permitted area of a cottage food operation at any time in response to a foodborne outbreak or other public health emergency.

(2) When conducting an annual basic hygiene inspection, the director shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of any cottage food products or be in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(b) That no cottage food preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(c) That no infants, small children, or pets are in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(d) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use;

(e) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(f) That all persons involved in the preparation and packaging of cottage food products:

(i) Have obtained a food and beverage service workers permit under chapter 69.06 RCW;

(ii) Are not going to work in the home kitchen when ill;

(iii) Wash their hands before any food preparation and food packaging activities; and

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.

(3) The department shall charge an inspection fee of one hundred twenty-five dollars for any initial or annual basic hygiene inspection, which must be deposited into the food processing inspection account created in RCW 69.07.120. An additional inspection fee must be collected for each visit to a cottage food operation for the purposes of conducting an inspection for compliance.

(4) The director may contract with local health jurisdictions to conduct the inspections required under this section.

NEW SECTION. Sec. 5. (1) The gross sales of cottage food products may not exceed an annual amount set by the department. The determination of the maximum annual gross sales must be computed on the basis of the amount of gross sales within or at a particular domestic residence and may not be computed on a per person basis within or at an individual domestic residence.

(2) If gross sales exceed the maximum annual gross sales amount, the cottage food operation must either obtain a food processing plant license under chapter 69.07 RCW or cease operations.

(3) A cottage food operation exceeding the maximum annual gross sales amount is not entitled to a full or partial refund of any fees paid under section 3 or 4 of this act.

(4) The maximum annual gross sales amount must be established in rule by the department consistent with this subsection. The amount must be set at fifteen thousand dollars until December 31, 2012. Beginning January 1, 2013, the department must increase the fifteen thousand dollar annual gross sales limit biennially to reflect inflation. The department may determine inflation-based increases in any matter it deems most efficient.

(5) The director may request in writing documentation to verify the annual gross sales figure.

NEW SECTION. Sec. 6. (1) For the purpose of determining compliance with this chapter, the director may access, for inspection purposes, the permitted area of a domestic residence housing a cottage food operation permitted by the director under this chapter. This authority includes the authority to inspect any records required to be kept under the provisions of this chapter.

(2) All inspections must be made at reasonable times and, when possible, during regular business hours.

(3) Should the director be denied access to the permitted area of a domestic residence housing a cottage food operation where access was sought for the purposes of enforcing or administering this chapter, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the permitted area of a domestic residence housing a permitted cottage food operation, upon which the court may issue a search warrant for the purposes requested.

(4) Any access under this section must be limited to the permitted area and further limited to the purpose of enforcing or administering this chapter.

NEW SECTION. Sec. 7. (1) After conducting a hearing, the director may deny, suspend, or revoke any permit provided for in this chapter if it is determined that a permittee has committed any of the following acts:

(a) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(c) Consistent with section 6 of this act, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;

(d) Consistent with section 6 of this act, refused the department access to any records required to be kept under the provisions of this chapter; or

(e) Exceeded the annual income limits provided in section 5 of this act.

(2) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied

access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.

NEW SECTION. Sec. 8. The rights, remedies, and procedures respecting the administration of this chapter, including rule making, emergency actions, and permit suspension, revocation, or denial are governed by chapter 34.05 RCW.

NEW SECTION. Sec. 9. (1)(a) Any person engaging in a cottage food operation without a valid permit issued under section 3 of this act or otherwise violating any provision of this chapter, or any rule adopted under this chapter, is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

NEW SECTION. Sec. 10. Except as otherwise provided in this chapter, cottage food operations with a valid permit under section 3 of this act are not subject to the provisions of chapter 69.07 RCW or to permitting and inspection by a local health jurisdiction.

NEW SECTION. Sec. 11. Nothing in this chapter affects the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government.

Sec. 12. RCW 69.07.120 and 1992 c 160 s 5 are each amended to read as follows:

All moneys received by the department under the provisions of this chapter and chapter 69.— RCW (the new chapter created in section 14 of this act) shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapters 69.— RCW (the new chapter created in section 14 of this act) and 69.04 RCW.

Sec. 13. RCW 69.07.100 and 2002 c 301 s 10 are each amended to read as follows:

(1) The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

~~((1))~~ (a) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

~~((2))~~ (b) Chapter 69.28 RCW, the Washington state honey act;

~~((3))~~ (c) Chapter 16.49 RCW, the Meat inspection act;

~~((4))~~ (d) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;

~~((5))~~ (e) Chapter 69.— RCW (the new chapter created in section 14 of this act), relating to cottage food operations;

(f) Title 66 RCW, relating to alcoholic beverage control; and

~~((6))~~ (g) Chapter 69.30 RCW, the sanitary control of shellfish act. ~~((However,))~~

(2) If any such establishments process foods not specifically provided for in the above entitled acts, ~~((such))~~ the establishments ~~((shall be))~~ are subject to the provisions of this chapter.

(3) The provisions of this chapter ~~((shall))~~ do not apply to restaurants or food service establishments.

NEW SECTION. Sec. 14. Sections 1 through 11 of this act constitute a new chapter in Title 69 RCW.

Passed by the Senate April 21, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 5, 2011.

Filed in Office of Secretary of State May 6, 2011.

CHAPTER 282

[House Bill 1334]

CIVIL JUDGMENTS FOR ASSAULT—PAYMENT

AN ACT Relating to civil judgments for assault; amending RCW 72.09.015 and 72.09.480; reenacting and amending RCW 72.09.111; and prescribing penalties.

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

Sec. 1. RCW 72.09.015 and 2010 c 181 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

~~((4))~~ (5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

~~((5))~~ (6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

~~((6))~~ (7) "County" means a county or combination of counties.

~~((7))~~ (8) "Department" means the department of corrections.

~~((8))~~ (9) "Earned early release" means earned release as authorized by RCW ~~((9.94A.728))~~ 9.94A.729.

~~((9))~~ (10) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

~~((10))~~ (11) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

~~((11))~~ (12) "Good conduct" means compliance with department rules and policies.

~~((12))~~ (13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

~~((13))~~ (14) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

~~((14))~~ (15) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

~~((15))~~ (16) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

~~((16))~~ (17) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

~~((17))~~ (18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

~~((18))~~ (19) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by

direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

~~((19))~~ (20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

~~((20))~~ (21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

~~((21))~~ (22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

~~((22))~~ (23) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

~~((23))~~ (24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

~~((24))~~ (25) "Secretary" means the secretary of corrections or his or her designee.

~~((25))~~ (26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

~~((26))~~ (27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

~~((27))~~ (28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

~~((28))~~ (29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage,

the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

~~((29))~~ (30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

~~((30))~~ (31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

~~((31))~~ (32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

Sec. 2. RCW 72.09.111 and 2010 c 122 s 5 and 2010 c 116 s 1 are each reenacted and amended to read as follows:

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; ~~(and)~~

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Twenty percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; ~~(and)~~

(v) Fifteen percent for any child support owed under a support order; and

(vi) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the crime victims' compensation account provided in RCW 7.68.045; (~~and~~)

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; (~~and~~)

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, may be made available to an inmate at the following times:

(i) During confinement to pay for accredited postsecondary educational expenses;

(ii) Prior to the release from confinement to pay for department-approved reentry activities that promote successful community reintegration; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) The secretary shall establish guidelines for the release of funds pursuant to (a) of this subsection, giving consideration to the inmate's need for resources at the time of his or her release from confinement.

(c) Any funds remaining in an offender's personal inmate savings account shall be made available to the offender at the time of his or her release from confinement.

(4) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

Sec. 3. RCW 72.09.480 and 2010 c 122 s 6 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order;

~~((and))~~
(e) Twenty percent to the department to contribute to the cost of incarceration; and

(f) Twenty percent for payment of any civil judgment for assault for all inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) and (f) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

Passed by the House April 14, 2011.
 Passed by the Senate April 4, 2011.
 Approved by the Governor May 5, 2011.
 Filed in Office of Secretary of State May 6, 2011.

CHAPTER 283

[Engrossed Second Substitute House Bill 1267]

UNIFORM PARENTAGE ACT

AN ACT Relating to clarifying and expanding the rights and obligations of state registered domestic partners and other couples related to parentage; amending RCW 26.26.011, 26.26.021, 26.26.041, 26.26.051, 26.26.101, 26.26.106, 26.26.111, 26.26.116, 26.26.130, 26.26.150, 26.26.300, 26.26.305, 26.26.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 26.26.340, 26.26.360, 26.26.375, 26.26.400, 26.26.405, 26.26.410, 26.26.420, 26.26.425, 26.26.430, 26.26.435, 26.26.445, 26.26.505, 26.26.510, 26.26.525, 26.26.530, 26.26.535, 26.26.540, 26.26.545, 26.26.550, 26.26.555, 26.26.570, 26.26.575, 26.26.585, 26.26.590, 26.26.600, 26.26.620, 26.26.625, 26.26.630, 26.26.705, 26.26.710, 26.26.715, 26.26.720, 26.26.725, 26.26.730, 26.26.735, 26.26.903, and 26.26.911; adding a new section to chapter 26.26 RCW; and creating new sections.

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

Sec. 1. RCW 26.26.011 and 2002 c 302 s 102 are each amended to read as follows:

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

(1) "Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

(2) "Adjudicated ~~((father))~~ parent" means a ~~((man))~~ person who has been adjudicated by a court of competent jurisdiction to be the ~~((father))~~ parent of a child.

(3) "Alleged ~~((father))~~ parent" means a ~~((man))~~ person who alleges himself or herself to be, or is alleged to be, the genetic ~~((father))~~ parent or a possible genetic ~~((father))~~ parent of a child, but whose ~~((paternity))~~ parentage has not been determined. The term does not include:

(a) A presumed ~~((father))~~ parent;

(b) A ~~((man))~~ person whose parental rights have been terminated or declared not to exist; or

(c) A ~~((male))~~ donor.

(4) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(a) ~~((Intrauterine))~~ Artificial insemination;

(b) Donation of eggs;

(c) Donation of embryos;

(d) In vitro fertilization and transfer of embryos; and

(e) Intracytoplasmic sperm injection.

(5) "Child" means an individual of any age whose parentage may be determined under this chapter.

(6) "Commence" means to file the petition seeking an adjudication of parentage in a superior court of this state or to serve a summons and the petition.

(7) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

(8) "Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

(9) "Donor" means an individual who ~~((produces eggs or sperm used))~~ contributes a gamete or gametes for assisted reproduction, whether or not for consideration. The term does not include:

(a) A ~~((husband))~~ person who provides ~~((sperm, or a wife who provides eggs,))~~ a gamete or gametes to be used for assisted reproduction ~~((by the wife))~~ with his or her spouse or domestic partner; or

(b) A woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in RCW 26.26.210 through 26.26.260 or 26.26.735.

~~((9))~~ (10) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of ~~((his or her))~~ the individual's ancestry or that is so identified by other information.

~~((10))~~ (11) "Gamete" means either a sperm or an egg.

(12) "Genetic testing" means an analysis of genetic markers ~~((only))~~ to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(a) Deoxyribonucleic acid; and

(b) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

~~((11))~~ (13) "Man" means a male individual of any age.

~~((12))~~ (14) "Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

~~((13))~~ (15) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

~~((14) "Paternity"))~~ (16) "Parentage index" means the likelihood of ~~((paternity))~~ parentage calculated by computing the ratio between:

(a) The likelihood that the tested ~~((man))~~ person is the ~~((father))~~ parent, based on the genetic markers of the tested ~~((man))~~ person, ~~((mother))~~ genetic parent, and child, conditioned on the hypothesis that the tested ~~((man))~~ person is the ~~((father))~~ parent of the child; and

(b) The likelihood that the tested ~~((man))~~ person is not the ~~((father))~~ parent, based on the genetic markers of the tested ~~((man))~~ person, ~~((mother))~~ genetic parent, and child, conditioned on the hypothesis that the tested ~~((man))~~ person is not the ~~((father))~~ parent of the child and that the ~~((father))~~ parent is ~~((from))~~ of the same ethnic or racial group as the tested ~~((man))~~ person.

~~((15))~~ (17) "Physician" means a person licensed to practice medicine in a state.

(18) "Presumed (father) parent" means a ~~((man))~~ person who, by operation of law under RCW 26.26.116, is recognized ~~((to be))~~ as the ~~((father))~~ parent of a child until that status is rebutted or confirmed in a judicial proceeding.

~~((16))~~ (19) "Probability of (paternity) parentage" means the measure, for the ethnic or racial group to which the alleged ~~((father))~~ parent belongs, of the probability that the individual in question is the ~~((father))~~ parent of the child, compared with a random, unrelated ~~((man))~~ person of the same ethnic or racial group, expressed as a percentage incorporating the ~~((paternity))~~ parentage index and a prior probability.

~~((17))~~ (20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~((18))~~ (21) "Signatory" means an individual who authenticates a record and is bound by its terms.

~~((19))~~ (22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by state law.

~~((20))~~ (23) "Support enforcement agency" means a public official or agency authorized to seek:

- (a) Enforcement of support orders or laws relating to the duty of support;
- (b) Establishment or modification of child support;
- (c) Determination of parentage; or
- (d) Location of child support obligors and their income and assets.

(24) "Fertility clinic" means a facility that provides assisted reproduction services or gametes to be used in assisted reproduction.

(25) "Genetic parent" means a person who is the source of the egg or sperm that produced the child. The term does not include a donor.

(26) "Identifying information" includes, but is not limited to, the following information of the gamete donor:

- (a) The first and last name of the person; and
- (b) The age of the person at the time of the donation.

Sec. 2. RCW 26.26.021 and 2002 c 302 s 103 are each amended to read as follows:

(1) This chapter ~~((governs every))~~ applies to determinations of parentage in this state.

(2) The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

- (a) The place of birth of the child; or
- (b) The past or present residence of the child.

(3) This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

(4) If a birth results under a surrogate parentage contract that is unenforceable under the law of this state, the parent-child relationship is determined as provided in RCW 26.26.101 through 26.26.116 and applicable case law.

Sec. 3. RCW 26.26.041 and 2002 c 302 s 105 are each amended to read as follows:

Proceedings under this chapter are subject to other laws of this state governing the health, safety, privacy, and liberty of a child or other individuals ~~((that))~~ who could be jeopardized by disclosure of identifying information, including the address, telephone number, place of employment, social security number, and the child's day-care facility and school.

Sec. 4. RCW 26.26.051 and 2002 c 302 s 106 are each amended to read as follows:

~~(1)~~ The provisions relating to determination of ~~((paternity may be applied))~~ parentage apply to ((a)) determinations of maternity and paternity.

~~(2)~~ The provisions in this chapter apply to persons in a domestic partnership to the same extent they apply to persons in a marriage, and apply to persons of the same sex who have children together to the same extent they apply to persons of the opposite sex who have children together.

Sec. 5. RCW 26.26.101 and 2002 c 302 s 201 are each amended to read as follows:

~~((1))~~ The ~~((mother-child))~~ parent-child relationship is established between a child and a man or woman by:

~~((a))~~ ~~(1)~~ The woman's having given birth to the child, except as otherwise provided in RCW 26.26.210 through 26.26.260;

~~((b))~~ ~~(2)~~ An adjudication of the ~~((woman's maternity))~~ person's parentage;

~~((c))~~ ~~(3)~~ Adoption of the child by the ~~((woman))~~ person;

~~((d))~~ ~~A valid surrogate parentage contract, under which the mother is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260;~~
or

~~((e))~~ ~~(4)~~ An affidavit and physician's certificate in a form prescribed by the department of health wherein the donor of ~~((ovum))~~ eggs or surrogate gestation carrier sets forth her intent to be legally bound as the parent of a child or children born through ~~((alternative reproductive medical technology))~~ assisted reproduction by filing the affidavit and physician's certificate with the registrar of vital statistics within ten days after the date of the child's birth pursuant to RCW 26.26.735(

~~(2)~~ ~~The father-child relationship is established between a child and a man by:~~

~~((a))~~;

~~(5)~~ An un rebutted presumption of the ~~((man's paternity))~~ person's parentage of the child under RCW 26.26.116;

~~((b))~~ ~~(6)~~ The man's having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged;

~~((c))~~ ~~An adjudication of the man's paternity;~~

~~(d)~~ ~~Adoption of the child by the man;~~

~~((e))~~ ~~(7)~~ The ~~((man's))~~ person's having consented to assisted reproduction by his ~~((wife))~~ or her spouse or domestic partner under RCW 26.26.700 through 26.26.730 that resulted in the birth of the child; or

~~((f))~~ ~~(8)~~ A valid surrogate parentage contract, under which the ~~((father))~~ person asserting parentage is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260.

Sec. 6. RCW 26.26.106 and 2002 c 302 s 202 are each amended to read as follows:

A child born to parents who are not married to each other or in a domestic partnership with each other has the same rights under the law as a child born to parents who are married to each other or who are in a domestic partnership with each other.

Sec. 7. RCW 26.26.111 and 2002 c 302 s 203 are each amended to read as follows:

Unless parental rights are terminated, the parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

Sec. 8. RCW 26.26.116 and 2002 c 302 s 204 are each amended to read as follows:

(1) In the context of a marriage or a domestic partnership, a ~~((man))~~ person is presumed to be the ~~((father))~~ parent of a child if:

(a) ~~((He))~~ The person and the mother or father of the child are married to each other or in a domestic partnership with each other and the child is born during the marriage or domestic partnership;

(b) ~~((He))~~ The person and the mother or father of the child were married to each other or in a domestic partnership with each other and the child is born within three hundred days after the marriage or domestic partnership is terminated by death, annulment, dissolution (~~((of marriage))~~), legal separation, or declaration of invalidity;

(c) Before the birth of the child, ~~((he))~~ the person and the mother or father of the child married each other or entered into a domestic partnership with each other in apparent compliance with law, even if the attempted marriage or domestic partnership is, or could be, declared invalid and the child is born during the invalid marriage or invalid domestic partnership or within three hundred days after its termination by death, annulment, dissolution (~~((of marriage))~~), legal separation, or declaration of invalidity; or

(d) After the birth of the child, ~~((he))~~ the person and the mother or father of the child have married each other or entered into a domestic partnership with each other in apparent compliance with law, whether or not the marriage or domestic partnership is, or could be declared invalid, and ~~((he))~~ the person voluntarily asserted (~~((his paternity))~~ parentage of the child, and:

(i) The assertion is in a record filed with the state registrar of vital statistics;

(ii) The person agreed to be and is named as the child's ~~((father))~~ parent on the child's birth certificate; or

(iii) The person promised in a record to support the child as his or her own.

(2) A person is presumed to be the parent of a child if, for the first two years of the child's life, the person resided in the same household with the child and openly held out the child as his or her own.

(3) A presumption of (~~((paternity))~~ parentage established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.

Sec. 9. RCW 26.26.130 and 2001 c 42 s 5 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other

security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct ~~((the father))~~ one parent to pay the reasonable expenses of the mother's pregnancy and ~~((confinement))~~ childbirth. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(4) The judgment and order shall contain a provision that each party must file with the court and the Washington state child support registry and update as necessary the information required in the confidential information form required by RCW 26.23.050.

(5) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the ~~((father's))~~ parent's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(6) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(7) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party. If a parenting plan or residential schedule was not entered at the time the order establishing parentage was entered, a parent may move the court for entry of a parenting plan or residential schedule:

(a) By filing a motion and proposed parenting plan or residential schedule and providing notice to the other parent and other persons who have residential time with the child pursuant to a court order: PROVIDED, That at the time of filing the motion less than twenty-four months have passed since entry of the order establishing parentage and that the proposed parenting plan or residential schedule does not change the designation of the parent with whom the child spends the majority of time; or

(b) By filing a petition for modification under RCW 26.09.260 or petition to establish a parenting plan, residential schedule, or residential provisions.

(8) In any dispute between the ~~((natural parents))~~ persons claiming parentage of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the ~~((natural parent or parents))~~ persons claiming parentage, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(9) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(10) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(11) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(12) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

Sec. 10. RCW 26.26.150 and 1994 c 230 s 16 are each amended to read as follows:

(1) If existence of the ~~((father))~~ parent and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the ~~((father))~~ parent may be enforced in the same or other proceedings by the ~~((mother))~~ other parent, the child, the state of Washington, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, ~~((confinement))~~ childbirth, education, support, or funeral, or by any other person, including a private agency, to the extent he or she has furnished or is furnishing these expenses.

(2) The court shall order support payments to be made to the Washington state support registry, or the person entitled to receive the payments under an alternate arrangement approved by the court as provided in RCW 26.23.050(2).

(3) All remedies for the enforcement of judgments apply.

Sec. 11. RCW 26.26.300 and 2002 c 302 s 301 are each amended to read as follows:

The mother of a child and a man claiming to be the genetic father of the child ~~((conceived as the result of his sexual intercourse with the mother))~~ may sign an acknowledgment of paternity with intent to establish the man's paternity.

Sec. 12. RCW 26.26.305 and 2002 c 302 s 302 are each amended to read as follows:

(1) An acknowledgment of paternity must:

(a) Be in a record;

(b) Be signed under penalty of perjury by the mother and by the man seeking to establish his paternity;

- (c) State that the child whose paternity is being acknowledged:
 - (i) Does not have a presumed father, or has a presumed father whose full name is stated; and
 - (ii) Does not have another acknowledged or adjudicated father;
- (d) State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the genetic testing; and
- (e) State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years, except as provided in RCW 26.26.330.
 - (2) An acknowledgment of paternity is void if it:
 - (a) States that another man is a presumed father, unless a denial of paternity signed by the presumed father is filed with the state registrar of vital statistics;
 - (b) States that another man is an acknowledged or adjudicated father; or
 - (c) Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.
 - (3) A presumed father may sign an acknowledgment of paternity.

Sec. 13. RCW 26.26.310 and 2002 c 302 s 303 are each amended to read as follows:

A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

- (1) An acknowledgment of paternity signed by another man is filed under RCW 26.26.320;
- (2) The denial is in a record, and is signed under penalty of perjury; and
- (3) The presumed father has not previously:
 - (a) Acknowledged his paternity, unless the previous acknowledgment has been rescinded under RCW 26.26.330 or successfully challenged under RCW 26.26.335; or
 - (b) Been adjudicated to be the father of the child.

Sec. 14. RCW 26.26.315 and 2002 c 302 s 304 are each amended to read as follows:

(1) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

(2) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(3) Subject to subsection (1) of this section, an acknowledgment and denial of paternity, if any, take effect on the birth of the child or the filing of the document with the state registrar of vital statistics, whichever occurs later.

(4) An acknowledgment or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter. An acknowledgment or denial of paternity signed by a minor may be rescinded under RCW 26.26.330.

Sec. 15. RCW 26.26.320 and 2002 c 302 s 305 are each amended to read as follows:

(1) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid acknowledgment of paternity filed with the state registrar of vital statistics is

equivalent to an adjudication of ~~((paternity))~~ parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent.

(2) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid denial of paternity filed with the state registrar of vital statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all of the rights and duties of a parent.

Sec. 16. RCW 26.26.330 and 2004 c 111 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a signatory may rescind an acknowledgment or denial of paternity by commencing a court proceeding to rescind before the earlier of:

~~((1))~~ (a) Sixty days after the effective date of the acknowledgment or denial, as provided in RCW 26.26.315; or

~~((2))~~ (b) The date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) If the signatory to an acknowledgment or denial of paternity was a minor when he signed the acknowledgment or denial, the signatory may rescind the acknowledgment or denial of paternity by commencing a court proceeding to rescind on or before the signatory's nineteenth birthday.

Sec. 17. RCW 26.26.335 and 2002 c 302 s 308 are each amended to read as follows:

(1) After the period for rescission under RCW 26.26.330 has ~~((elapsed))~~ expired, a signatory of an acknowledgment or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(a) On the basis of fraud, duress, or material mistake of fact; and

(b) Within ~~((two))~~ four years after the acknowledgment or denial is filed with the state registrar of vital statistics. In actions commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A party challenging an acknowledgment or denial of paternity has the burden of proof.

Sec. 18. RCW 26.26.340 and 2002 c 302 s 309 are each amended to read as follows:

(1) Every signatory to an acknowledgment ~~((of))~~ of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(2) For the purpose of rescission of, or challenge to, an acknowledgment or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial, effective upon the filing of the document with the state registrar of vital statistics.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from ~~((an))~~ the acknowledgment, including the duty to pay child support.

(4) A proceeding to rescind or to challenge an acknowledgment or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under RCW 26.26.500 through 26.26.630.

(5) At the conclusion of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court shall order the state registrar of vital statistics to amend the birth record of the child, if appropriate.

Sec. 19. RCW 26.26.360 and 2002 c 302 s 313 are each amended to read as follows:

The state registrar of vital statistics may release information relating to the acknowledgment or denial of paternity (~~(, not expressly sealed under a court order,)~~) to: (1) A signatory of the acknowledgment or denial (~~(or their attorneys of record)~~); (2) the courts of this or any other state; (3) the agencies of this or any other state operating a child support program under Title IV-D of the social security act; ~~((or))~~ and (4) the agencies of this or any other state involved in a dependency determination for a child named in the acknowledgment or denial of paternity.

Sec. 20. RCW 26.26.375 and 2002 c 302 s 316 are each amended to read as follows:

(1) After the period for rescission of an acknowledgment of paternity provided in RCW 26.26.330 has passed, a parent executing an acknowledgment of paternity of the child named therein may commence a judicial proceeding for:

(a) Making residential provisions or a parenting plan with regard to the minor child on the same basis as provided in chapter 26.09 RCW; or

(b) Establishing a child support obligation under chapter 26.19 RCW and maintaining health insurance coverage under RCW 26.09.105.

(2) Pursuant to RCW 26.09.010(3), a proceeding authorized by this section shall be ~~((entitled))~~ titled "In re the parenting and support of..."

(3) Before the period for a challenge to the acknowledgment or denial of paternity has elapsed under RCW 26.26.335, the petitioner must specifically allege under penalty of perjury, to the best of the petitioner's knowledge, that: (a) No man other than the man who executed the acknowledgment of paternity is the father of the child; (b) there is not currently pending a proceeding to adjudicate the parentage of the child or that another man is adjudicated the child's father; and (c) the petitioner has provided notice of the proceeding to any other men who have claimed parentage of the child. Should the respondent or any other person appearing in the action deny the allegations, a permanent parenting plan or residential schedule may not be entered for the child without the matter being converted to a proceeding to challenge the acknowledgment of paternity under RCW 26.26.335 and 26.26.340. A copy of the acknowledgment of paternity or the birth certificate issued by the state in which the child was born must be filed with the petition or response. The court may convert the matter to a proceeding to challenge the acknowledgment on its own motion.

Sec. 21. RCW 26.26.400 and 2002 c 302 s 401 are each amended to read as follows:

RCW 26.26.405 through 26.26.450 govern genetic testing of an individual ~~((only))~~ to determine parentage, whether the individual:

(1) Voluntarily submits to testing; or

(2) Is tested pursuant to an order of the court or a support enforcement agency.

Sec. 22. RCW 26.26.405 and 2002 c 302 s 402 are each amended to read as follows:

(1) Except as otherwise provided in this section and RCW 26.26.410 through 26.26.630, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(a) Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(b) Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(2) A support enforcement agency may order genetic testing only if there is no presumed(~~(, acknowledged,)~~) or adjudicated (~~(father)~~) parent and no acknowledged father.

(3) If a request for genetic testing of a child is made before birth, the court or support enforcement agency may not order in utero testing.

(4) If two or more (~~men~~) persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

(5) This section does not apply when the child was conceived through assisted reproduction.

Sec. 23. RCW 26.26.410 and 2002 c 302 s 403 are each amended to read as follows:

(1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(a) The American association of blood banks, or a successor to its functions;

(b) The American society for histocompatibility and immunogenetics, or a successor to its functions; or

(c) An accrediting body designated by the United States secretary of health and human services.

(2) A specimen used in genetic testing may consist of one or more samples or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(3) Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in (~~the~~) calculation(~~s~~) of the probability of parentage. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(a) The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of (~~paternity~~) parentage using an ethnic or racial group different from that used by the laboratory.

(b) The individual objecting to the testing laboratory's initial choice shall:

(i) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(ii) Engage another testing laboratory to perform the calculations.

(c) The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(4) If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a ~~((man))~~ person as the ~~((father))~~ parent of a child under RCW 26.26.420, an individual who has been tested may be required to submit to additional genetic testing.

Sec. 24. RCW 26.26.420 and 2002 c 302 s 405 are each amended to read as follows:

(1) Under this chapter, a ~~((man))~~ person is rebuttably identified as the ~~((father))~~ parent of a child if the genetic testing complies with this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 and the results disclose that:

(a) The ~~((man))~~ person has at least a ninety-nine percent probability of ~~((paternity))~~ parentage, using a prior probability of 0.50, as calculated by using the combined ~~((paternity))~~ parentage index obtained in the testing; and

(b) A combined ~~((paternity))~~ parentage index of at least one hundred to one.

(2) A ~~((man))~~ person identified under subsection (1) of this section as the ~~((father))~~ parent of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 which:

(a) Excludes the ~~((man))~~ person as a genetic ~~((father))~~ parent of the child; or

(b) Identifies another ~~((man))~~ person as the ~~((father))~~ parent of the child.

(3) Except as otherwise provided in RCW 26.26.445, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic ~~((father))~~ parent.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 25. RCW 26.26.425 and 2002 c 302 s 406 are each amended to read as follows:

(1) Subject to assessment of costs under RCW 26.26.500 through 26.26.630, the cost of initial genetic testing must be advanced:

(a) By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;

(b) By the individual who made the request;

(c) As agreed by the parties; or

(d) As ordered by the court.

(2) In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a ~~((man))~~ person who is rebuttably identified as the ~~((father))~~ parent.

Sec. 26. RCW 26.26.430 and 2002 c 302 s 407 are each amended to read as follows:

(1) The court or the support enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a ~~((man))~~ person as the ~~((father))~~ parent of the child under RCW 26.26.420, the court or agency may not order additional testing unless the party provides advance payment for the testing.

(2) This section does not apply when the child was conceived through assisted reproduction.

Sec. 27. RCW 26.26.435 and 2002 c 302 s 408 are each amended to read as follows:

(1) If a genetic testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, a court may order the following individuals to submit specimens for genetic testing:

- (a) The parents of the man;
- (b) Brothers and sisters of the man;
- (c) Other children of the man and their mothers; and
- (d) Other relatives of the man necessary to complete genetic testing.

(2) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

(3) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 28. RCW 26.26.445 and 2002 c 302 s 410 are each amended to read as follows:

(1) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(2) If ~~((genetic testing excludes none of the brothers as the genetic father, and))~~ each brother satisfies the requirements as the identified father of the child under RCW 26.26.420 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Sec. 29. RCW 26.26.505 and 2002 c 302 s 502 are each amended to read as follows:

Subject to RCW 26.26.300 through 26.26.375, 26.26.530, and 26.26.540, a proceeding to adjudicate parentage may be maintained by:

- (1) The child;
- (2) The ~~((mother of))~~ person who has established a parent-child relationship with the child;
- (3) A ~~((man))~~ person whose ~~((paternity))~~ parentage of the child is to be adjudicated;
- (4) The division of child support;
- (5) An authorized adoption agency or licensed child-placing agency;
- (6) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or
- (7) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260.

Sec. 30. RCW 26.26.510 and 2002 c 302 s 503 are each amended to read as follows:

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

(1) The ~~((mother))~~ parent of the child who has established a parent-child relationship with the child;

(2) A ~~((man))~~ person whose ~~((paternity))~~ parentage of the child is to be adjudicated; ~~((and))~~

(3) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260; and

(4) The child if required under RCW 26.26.530, 26.26.540, or 26.26.720.

Sec. 31. RCW 26.26.525 and 2002 c 302 s 506 are each amended to read as follows:

A proceeding to adjudicate the parentage of a child having no presumed ~~((acknowledged,))~~ or adjudicated ~~((father))~~ second parent and no acknowledged father may be commenced at any time during the life of the child, even after:

(1) The child becomes an adult; or

(2) An earlier proceeding to adjudicate ~~((paternity))~~ parentage has been dismissed based on the application of a statute of limitation then in effect.

Sec. 32. RCW 26.26.530 and 2002 c 302 s 507 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed ~~((father))~~ parent, the ~~((mother))~~ person with a parent-child relationship with the child, or another individual to adjudicate the parentage of a child having a presumed ~~((father))~~ parent must be commenced not later than ~~((two))~~ four years after the birth of the child. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A proceeding seeking to disprove the ~~((father-child))~~ parent-child relationship between a child and the child's presumed ~~((father))~~ parent may be maintained at any time if the court determines that ~~((~~

~~((a))~~ the presumed ~~((father))~~ parent and the ~~((mother-of))~~ person who has a parent-child relationship with the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception ~~((and~~

~~((b) The presumed father never openly treated the child as his own))~~ and the presumed parent never held out the child as his or her own.

Sec. 33. RCW 26.26.535 and 2002 c 302 s 508 are each amended to read as follows:

(1) In a proceeding to adjudicate parentage under circumstances described in RCW 26.26.530 or in RCW 26.26.540, a court may deny a motion seeking an order for genetic testing of the mother or father, the child, and the presumed or acknowledged father if the court determines that:

~~((a))~~ (i) The conduct of the mother or father or the presumed ~~((father))~~ or acknowledged parent estops that party from denying parentage; and

~~((b))~~ (ii) It would be inequitable to disprove the ~~((father-child))~~ parent-child relationship between the child and the presumed ~~((father))~~ or acknowledged parent; or

(b) The child was conceived through assisted reproduction.

(2) In determining whether to deny a motion to seek an order for genetic testing under subsection (1)(a) of this section, the court shall consider the best interest of the child, including the following factors:

(a) The length of time between the proceeding to adjudicate parentage and the time that the presumed ~~((father))~~ or acknowledged parent was placed on notice that he or she might not be the genetic ~~((father))~~ parent;

(b) The length of time during which the presumed ~~((father))~~ or acknowledged parent has assumed the role of ~~((father))~~ parent of the child;

(c) The facts surrounding the presumed ~~((father's))~~ or acknowledged parent's discovery of his or her possible ~~((nonpaternity))~~ nonparentage;

(d) The nature of the ~~((father-child))~~ relationship between the child and the presumed or acknowledged parent;

(e) The age of the child;

(f) The harm ~~((to the child which))~~ that may result to the child if ~~((presumed paternity))~~ parentage is successfully disproved;

(g) The nature of the relationship ~~((of))~~ between the child ~~((to))~~ and any alleged ~~((father))~~ parent;

(h) The extent to which the passage of time reduces the chances of establishing the ~~((paternity))~~ parentage of another ~~((man))~~ person and a child support obligation in favor of the child; and

(i) Other factors that may affect the equities arising from the disruption of the ~~((father-child))~~ parent-child relationship between the child and the presumed ~~((father))~~ or acknowledged parent or the chance of other harm to the child.

(3) In a proceeding involving the application of this section, ~~((the))~~ a minor or incapacitated child must be represented by a guardian ad litem.

(4) A denial of a motion seeking an order for genetic testing under subsection (1)(a) of this section must be based on clear and convincing evidence.

(5) If the court denies a motion seeking an order for genetic testing under subsection (1)(a) of this section, it shall issue an order adjudicating the presumed ~~((father))~~ or acknowledged parent to be the ~~((father))~~ parent of the child.

Sec. 34. RCW 26.26.540 and 2002 c 302 s 509 are each amended to read as follows:

(1) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity must commence any proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of ~~((that))~~ the child only within the time allowed under RCW 26.26.330 or 26.26.335.

(2) If a child has an acknowledged father or an adjudicated ~~((father))~~ parent, an individual, other than the child, who is neither a signatory to the acknowledgment nor a party to the adjudication and who seeks an adjudication of ~~((paternity))~~ parentage of the child must commence a proceeding not later than ~~((two))~~ four years after the effective date of the acknowledgment or adjudication. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(3) A proceeding under this section is subject to RCW 26.26.535.

Sec. 35. RCW 26.26.545 and 2002 c 302 s 510 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a proceeding to adjudicate parentage may be joined with a proceeding for: Adoption or termination of parental rights under chapter 26.33 RCW; determination of a parenting plan, child support, annulment, dissolution of marriage, dissolution of a domestic partnership, or legal separation under chapter

26.09 or 26.19 RCW; or probate or administration of an estate under chapter 11.48 or 11.54 RCW, or other appropriate proceeding.

(2) A respondent may not join ~~((the))~~ a proceeding~~((s))~~ described in subsection (1) of this section with a proceeding to adjudicate parentage brought under chapter 26.21A RCW.

Sec. 36. RCW 26.26.550 and 2002 c 302 s 511 are each amended to read as follows:

~~((Although))~~ A proceeding to ~~((determine))~~ adjudicate parentage may be commenced before the birth of the child, ~~((the proceeding))~~ but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

- (1) Service of process;
- (2) Discovery;
- (3) Except as prohibited by RCW 26.26.405, collection of specimens for genetic testing; and
- (4) Temporary orders authorized under RCW 26.26.590.

Sec. 37. RCW 26.26.555 and 2002 c 302 s 512 are each amended to read as follows:

(1) Unless specifically required under other provisions of this chapter, a minor child is a permissible party, but is not a necessary party to a proceeding under RCW 26.26.500 through 26.26.630.

(2) If ~~((the))~~ a minor or incapacitated child is a party, or if the court finds that the interests of ~~((a minor child or incapacitated))~~ the child are not adequately represented, the court shall appoint a guardian ad litem to represent the child, subject to RCW 74.20.310 ~~((neither the child's mother or father))~~. A parent of the child may not represent the child as guardian or ((otherwise)) in any other capacity.

Sec. 38. RCW 26.26.570 and 2002 c 302 s 521 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

- (a) Voluntarily or under an order of the court or a support enforcement agency; or
- (b) Before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed~~((, acknowledged,))~~ or adjudicated ~~((father))~~ parent or an acknowledged father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(a) With the consent of both the ~~((mother))~~ person with a parent-child relationship with the child and the presumed~~(, acknowledged,)~~ or adjudicated ~~((father))~~ parent or an acknowledged father; or

(b) Under an order of the court under RCW 26.26.405.

(4) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

(a) The amount of the charges billed; and

(b) That the charges were reasonable, necessary, and customary.

Sec. 39. RCW 26.26.575 and 2002 c 302 s 522 are each amended to read as follows:

(1) An order for genetic testing is enforceable by contempt.

(2) If an individual whose paternity is being determined declines to submit to genetic testing ~~((as))~~ ordered by the court, the court for that reason may ~~((on that basis))~~ adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

(4) This section does not apply when the child was conceived through assisted reproduction.

Sec. 40. RCW 26.26.585 and 2002 c 302 s 523 are each amended to read as follows:

(1) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(2) If the court finds that the admission of paternity ~~((was made under))~~ satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity.

Sec. 41. RCW 26.26.590 and 2002 c 302 s 524 are each amended to read as follows:

This section applies to any proceeding under RCW 26.26.500 through 26.26.630.

(1) The court shall issue a temporary order for support of a child if the individual ordered to pay support:

(a) Is a presumed ~~((father))~~ parent of the child;

(b) Is petitioning to have his ~~((paternity))~~ or her parentage adjudicated or has admitted ~~((paternity))~~ parentage in pleadings filed with the court;

(c) Is identified as the father through genetic testing under RCW 26.26.420;

(d) Has declined to submit to genetic testing but is shown by clear and convincing evidence to be the father of the child; or

(e) Is ~~((the mother of))~~ a person who has established a parent-child relationship with the child.

(2) A temporary order may, on the same basis as provided in chapter 26.09 RCW, make residential provisions with regard to minor children of the parties, except that a parenting plan is not required unless requested by a parent.

(3) Any party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

- (a) Molesting or disturbing the peace of another party;
- (b) Going onto the grounds of or entering the home, workplace, or school of another party or the day care or school of any child;
- (c) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and
- (d) Removing a child from the jurisdiction of the court.

(4) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(5) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(6) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(7) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(8) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(9) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(10) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the petition is dismissed; and

(d) May be entered in a proceeding for the modification of an existing order.

(11) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding.

Sec. 42. RCW 26.26.600 and 2002 c 302 s 531 are each amended to read as follows:

The court shall apply the following rules to adjudicate the ~~((paternity))~~ parentage of a child:

(1) Except as provided in subsection (5) of this section, the ~~((paternity))~~ parentage of a child having a presumed~~((, acknowledged,))~~ or adjudicated ~~((father))~~ parent or an acknowledged father may be disproved only by admissible results of genetic testing excluding that ~~((man))~~ person as the ~~((father))~~ parent of the child or identifying another man ~~((to be))~~ as the father of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of the child under RCW 26.26.420 must be adjudicated the father of the child.

(3) If the court finds that genetic testing under RCW 26.26.420 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, ~~((along with))~~ and other evidence, are admissible to adjudicate the issue of paternity.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

(5) Subsections (1) through (4) of this section do not apply when the child was conceived through assisted reproduction. The parentage of a child conceived through assisted reproduction may be disproved only by admissible evidence showing the intent of the presumed, acknowledged, or adjudicated parent and the other parent.

Sec. 43. RCW 26.26.620 and 2002 c 302 s 535 are each amended to read as follows:

The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and ~~((may be challenged in another judicial or an administrative proceeding))~~ has only the effect of a dismissal without prejudice.

Sec. 44. RCW 26.26.625 and 2002 c 302 s 536 are each amended to read as follows:

(1) The court shall issue an order adjudicating whether a ~~((man))~~ person alleged or claiming to be the ~~((father))~~ parent is the parent of the child.

(2) An order adjudicating parentage must identify the child by name and age.

(3) Except as otherwise provided in subsection (4) of this section, the court may assess filing fees, reasonable attorneys' fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section and RCW 26.26.500 through 26.26.620 and 26.26.630. The court may award attorneys' fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.

(5) On request of a party and for good cause shown, the court may order that the name of the child be changed.

(6) If the order of the court is at variance with the child's birth certificate, the court shall order the state registrar of vital statistics to issue an amended birth certificate.

Sec. 45. RCW 26.26.630 and 2002 c 302 s 537 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, a determination of parentage is binding on:

(a) All signatories to an acknowledgment or denial of paternity as provided in RCW 26.26.300 through 26.26.375; and

(b) All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of RCW ~~((26.21.075))~~ 26.21A.100.

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment of paternity is consistent with the results of the genetic testing;

(b) The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown, or in the case of a child conceived through assisted reproduction, the adjudication of parentage was based on evidence showing the intent of the parents; or

(c) The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage or domestic partnership, the court is deemed to have made an adjudication of the parentage of a child if the court

acts under circumstances that satisfy the jurisdictional requirements of RCW ~~((26.21.075))~~ 26.21A.100, and the final order:

(a) Expressly identifies a child as a "child of the marriage," "issue of the marriage," "child of the domestic partnership," "issue of the domestic partnership," or similar words indicating that the ~~((husband is the father))~~ spouses in the marriage or domestic partners in the domestic partnership are the parents of the child; or

(b) Provides for support of the child by one or both of the ~~((husband))~~ spouses or domestic partners unless ~~((paternity))~~ parentage is specifically disclaimed in the order.

(4) Except as otherwise provided in subsection (2) of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

(5) A party to an adjudication of ~~((paternity))~~ parentage may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, ~~((and))~~ or other judicial review.

Sec. 46. RCW 26.26.705 and 2002 c 302 s 602 are each amended to read as follows:

A donor is not a parent of a child conceived by means of assisted reproduction, unless otherwise agreed in a signed record by the donor and the person or persons intending to be parents of a child conceived through assisted reproduction.

Sec. 47. RCW 26.26.710 and 2002 c 302 s 603 are each amended to read as follows:

~~((If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in RCW 26.26.715, he is the father of a resulting child born to his wife.))~~ A person who provides gametes for, or consents in a signed record to assisted reproduction with another person, with the intent to be the parent of the child born, is the parent of the resulting child.

Sec. 48. RCW 26.26.715 and 2002 c 302 s 604 are each amended to read as follows:

(1) ~~((A consent to assisted reproduction by a married woman must be in a record signed by the woman and her husband.))~~ Consent by a couple who intend to be parents of a child conceived by assisted reproduction must be in a record signed by both persons. This requirement does not apply to ~~((the donation of eggs for assisted reproduction by another woman))~~ a donor.

(2) Failure of the ~~((husband))~~ person to sign a consent required by subsection (1) of this section, before or after birth of the child, does not preclude a finding ~~((that the husband is the father of a child born to his wife if the wife and husband openly treated))~~ of parentage if the persons resided together in the same household with the child and openly held out the child as their own.

Sec. 49. RCW 26.26.720 and 2002 c 302 s 605 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, ~~((the husband of a wife))~~ a spouse or domestic partner of a woman who gives birth to a child by means of assisted reproduction, or a spouse or domestic partner of a

man who has a child by means of assisted reproduction, may not challenge his ~~((paternity))~~ or her parentage of the child unless:

(a) Within ~~((two))~~ four years after learning of the birth of the child ~~((he))~~ the person commences a proceeding to adjudicate his ~~((paternity))~~ or her parentage. In actions commenced more than two years after the birth of the child, the child must be made a party to the action; and

(b) The court finds that ~~((he))~~ the person did not consent to the assisted reproduction, before or after birth of the child.

(2) A proceeding to adjudicate ~~((paternity))~~ parentage may be maintained at any time if the court determines that:

(a) The ~~((husband))~~ spouse or domestic partner did not provide ~~((sperm))~~ gametes for, or before or after the birth of the child consent to, assisted reproduction by his ~~((wife))~~ or her spouse or domestic partner;

(b) The ~~((husband and the mother))~~ spouse or domestic partner and the parent of the child have not cohabited since the probable time of assisted reproduction; and

(c) The ~~((husband))~~ spouse or domestic partner never openly ~~((treated))~~ held out the child as his or her own.

(3) The limitation provided in this section applies to a marriage or domestic partnership declared invalid after assisted reproduction.

Sec. 50. RCW 26.26.725 and 2002 c 302 s 606 are each amended to read as follows:

(1) If a marriage or domestic partnership is dissolved before placement of eggs, sperm, or an embryo, the former spouse or former domestic partner is not a parent of the resulting child unless the former spouse or former domestic partner consented in a signed record that if assisted reproduction were to occur after a ~~((divorce))~~ dissolution, the former spouse or former domestic partner would be a parent of the child.

(2) The consent of the former spouse or former domestic partner to assisted reproduction may be ~~((revoked))~~ withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child.

Sec. 51. RCW 26.26.730 and 2002 c 302 s 607 are each amended to read as follows:

If ~~((a spouse))~~ an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or an embryo, the deceased ~~((spouse))~~ individual is not a parent of the resulting child unless the deceased ~~((spouse))~~ individual consented in a signed record that if assisted reproduction were to occur after death, the deceased ~~((spouse))~~ individual would be a parent of the child.

Sec. 52. RCW 26.26.735 and 2002 c 302 s 608 are each amended to read as follows:

The donor of ~~((ovum))~~ eggs provided to a licensed physician for use in ~~((the alternative reproductive medical technology process))~~ assisted reproduction for the purpose of attempting to achieve a pregnancy in a woman other than the donor is treated in law as if she were not the ~~((natural mother))~~ parent of a child thereafter conceived and born unless the donor and the woman who gives birth to a child as a result of the ~~((alternative reproductive medical technology~~

~~procedures~~) assisted reproduction agree in writing that the donor is to be a parent. RCW 26.26.705 does not apply in such case. A woman who gives birth to a child conceived through ~~((alternative reproductive medical technology procedures))~~ assisted reproduction under the supervision and with the assistance of a licensed physician is treated in law as if she were the ~~((natural mother))~~ parent of the child unless an agreement in writing signed by an ~~((ovum))~~ egg donor and the woman giving birth to the child states otherwise. An agreement pursuant to this section must be in writing and signed by the ~~((ovum))~~ egg donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the ~~((ovum))~~ egg harvest, identify the subsequent medical procedures undertaken, and identify the intended parents. The agreement, including the affidavit and certification ~~((referenced in RCW 26.26.030))~~, must be filed with the registrar of vital statistics, where it must be kept confidential and in a sealed file.

NEW SECTION. Sec. 53. A new section is added to chapter 26.26 RCW to read as follows:

(1) A person who donates gametes to a fertility clinic in Washington to be used in assisted reproduction shall provide, at a minimum, his or her identifying information and medical history to the fertility clinic. The fertility clinic shall keep the identifying information and medical history of its donors and shall disclose the information as provided under subsection (2) of this section.

(2)(a) A child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to identifying information of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child, unless the donor has signed an affidavit of nondisclosure with the fertility clinic that provided the gamete for assisted reproduction.

(b) Regardless of whether the donor signed an affidavit of nondisclosure, a child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to the nonidentifying medical history of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child.

Sec. 54. RCW 26.26.903 and 2002 c 302 s 709 are each amended to read as follows:

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it and to the intent that the act apply to persons of the same sex who have children together to the same extent the act applies to persons of the opposite sex who have children together.

Sec. 55. RCW 26.26.911 and 2002 c 302 s 101 are each amended to read as follows:

This act may be known and cited as the uniform parentage act of 2002.

NEW SECTION. Sec. 56. Any action taken by an agency to implement the provisions of this act must be accomplished within existing resources. Any costs incurred by the administrative office of the courts for modifications to the judicial information system as a result of the provisions of this act shall be paid from the judicial information system account.

NEW SECTION. Sec. 57. 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. 58. This act applies to causes of action filed on or after the effective date of this section.

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 284

[Substitute House Bill 1312]

STATE HEALTH CARE PROGRAMS—LOW-INCOME INDIVIDUALS—WAIVER

AN ACT Relating to statutory changes needed to implement a waiver to receive federal assistance for certain state purchased health care programs; amending RCW 70.47.060; and reenacting and amending RCW 70.47.020 and 74.09.035.

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

Sec. 1. RCW 70.47.020 and 2009 c 568 s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is

accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; and

(vii) Who is not receiving ~~((medical assistance administered by the department of social and health services))~~ or has not been determined to be currently eligible for federally financed categorically needy or medically needy programs under chapter 74.09 RCW, except as provided under RCW 70.47.110;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's

spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

Sec. 2. RCW 70.47.060 and 2009 c 568 s 3 are each 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. 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 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 48.47.030, and such other factors as the administrator deems appropriate. The administrator shall encourage enrollees who have been continually enrolled on basic health for a period of one year or more to complete a health risk assessment and participate in programs approved by the administrator that may include wellness, smoking cessation, and chronic disease management programs. In approving programs, the administrator shall consider evidence that any such programs are proven to improve enrollee health status.

(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 (11) 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 (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under RCW 70.47.020(~~(6)~~) (9)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) 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.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must 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. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) 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. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(g) To collect from all public employees a voluntary opt-in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month, and any other amounts deemed reasonable by the administrator. The sponsorship levels shall be named "safety net contributor," "safety net hero," and "safety net champion" respectively. The donation amounts provided shall be tied to the level of

coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "save the safety net program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible 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.

(6) 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. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program. To prevent the risk of overexpenditure, the administrator may disenroll persons receiving subsidies from the program based on criteria adopted by the administrator. The criteria may include: Length of continual enrollment on the program, income level, or eligibility for other coverage. The administrator shall ~~((first attempt to))~~ identify enrollees who are eligible for other coverage, and, working with the department of social and health service as provided in RCW 70.47.010(5)(d), transition enrollees currently eligible for ~~((medical assistance))~~ federally financed categorically needy or medically needy programs administered under chapter 74.09 RCW to that coverage. The administrator shall develop criteria for persons disenrolled under this subsection to reapply for the program.

(7) 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.

(8) 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.

(9) 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 for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. 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.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible 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.

(11) 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, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, 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. The application is also considered an application for medical assistance under chapter 74.09 RCW and must include a social security number, if available, for each family member requesting coverage. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and (~~74.13.100 through 74.13.145~~) 74.13A.005 through 74.13A.080 shall not be counted toward a family's current gross family income for the purposes of this chapter. 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 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.

(12) 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.

(13) 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 or actuarially equivalent 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.

(14) 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.

(15) 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.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage.

Sec. 3. RCW 74.09.035 and 2010 1st sp.s. c 8 s 29 and 2010 c 94 s 22 are each reenacted and amended to read as follows:

(1) To the extent of available funds, medical care services may be provided to recipients of disability lifeline benefits, persons denied disability lifeline benefits under RCW 74.04.005(5)(b) or 74.04.655 who otherwise meet the requirements of RCW 74.04.005(5)(a), and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department. ~~((To the extent authorized in the operating budget.))~~ Enrollment in medical care services may not result in expenditures that exceed the amount that has been appropriated in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment and establish a waiting list of eligible persons who may receive benefits only when sufficient funds are available. Upon implementation of a federal medicaid 1115 waiver providing federal matching funds for medical care services, ((these services also may be provided to persons who have been terminated from disability lifeline benefits under RCW 74.04.005(5)(h))) persons subject to termination of disability lifeline benefits under RCW 74.04.005(5)(h) remain enrolled in medical care services and persons subject to denial of disability lifeline benefits under RCW 74.04.005(5)(h) remain eligible for medical care services.

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The department shall enter into performance-based contracts with one or more managed health care systems for the provision of medical care services to recipients of disability lifeline benefits. The contract must provide for integrated delivery of medical and mental health services.

(4) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the

voluntary assignment of property or cash for the purpose of qualifying for assistance.

(5) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for persons with intellectual disabilities, as that term is described by federal law, who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

~~(6) ((Payments made by the department under this program shall be the limit of expenditures for medical care services solely from state funds.~~

~~(7))~~ Eligibility for medical care services shall commence with the date of certification for disability lifeline benefits or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW.

Passed by the House April 5, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 285

[House Bill 1407]

WATER SYSTEMS—MUNICIPAL CORPORATION—SALE OR CONVEYANCE

AN ACT Relating to the negotiated sale and conveyance of all or part of water systems owned by a municipal corporation; and amending RCW 54.16.180.

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

Sec. 1. RCW 54.16.180 and 2008 c 198 s 5 are each amended to read as follows:

(1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns. The affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale((-)) shall be necessary to authorize such a sale.

(2) A district may, without the approval of the voters, sell, convey, lease, or otherwise dispose of all or any part of the property owned by it that is located:

(a) Outside its boundaries, to another public utility district, city, town or other municipal corporation; or

(b) Within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, to any person or public body.

(3) A district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the

district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials.

(4) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by the district where a portion of it is located within the boundaries of the city, without approval of the voters, upon such terms and conditions as the district shall determine.

(5) A district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of, a sewage system within the same service area as in the judgment of the district commission is necessary or advisable to eliminate or avoid any existing or potential danger to public health due to lack of sewerage facilities or inadequacy of existing facilities.

(6) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by the district without approval of the voters upon such terms and conditions as the district shall determine.

(7) A district located within a county with a population of from six hundred fifty thousand to less than seven hundred fifty thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than sixty-five thousand which owns its own water system all or any part of a water system owned by the district without approval of the voters upon such terms and conditions as the district shall determine.

(8) A district may sell and convey, lease, or otherwise dispose of, to any person or entity without approval of the voters and upon such terms and conditions as it determines, all or any part of an electric generating project owned directly or indirectly by the district, regardless of whether the project is completed, operable, or operating, as long as:

(a) The project is or would be powered by an eligible renewable resource as defined in RCW 19.285.030; and

(b) The district, or the separate legal entity in which the district has an interest in the case of indirect ownership, has:

(i) The right to lease the project or to purchase all or any part of the energy from the project during the period in which it does not have a direct or indirect ownership interest in the project; and

(ii) An option to repurchase the project or part thereof sold, conveyed, leased, or otherwise disposed of at or below fair market value upon termination of the lease of the project or termination of the right to purchase energy from the project.

~~((8))~~ (9) Districts are municipal corporations for the purposes of this section. A commission shall be held to be the legislative body, a president and secretary shall have the same powers and perform the same duties as a mayor

and city clerk, and the district resolutions shall be held to be ordinances within the meaning of statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns.

Passed by the House April 14, 2011.

Passed by the Senate April 4, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 286

[House Bill 1916]

ASSOCIATE DEVELOPMENT ORGANIZATIONS—BUSINESS SERVICES

AN ACT Relating to business services delivered by associate development organizations; amending RCW 43.330.080, 43.330.082, and 43.330.010; and adding a new section to chapter 43.330 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.330 RCW to read as follows:

In carrying out its responsibilities under RCW 43.330.060 and 43.330.080, the department must establish protocols to be followed by associate development organizations and department staff for the recruitment and retention of businesses. The protocols must specify the circumstances under which an associate development organization is required to notify the department of its business recruitment and retention efforts and when the department must notify the associate development organization of its business recruitment and retention efforts. The protocols established may not require the release of proprietary information or the disclosure of information that a client company has requested remain confidential. The department must require compliance with the protocols in its contracts with associate development organizations.

Sec. 2. RCW 43.330.080 and 2009 c 151 s 10 are each amended to read as follows:

In carrying out its obligations under RCW 43.330.070, the department ~~((shall))~~ must provide business services training to and contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The business services training provided to the organizations contracted with must include, but need not be limited to, training in the fundamentals of export assistance and the services available from private and public export assistance providers in the state. The organizations contracted within each community or regional area ~~((shall))~~ must work closely with the department to carry out state-identified economic development priorities and must be broadly representative of community and economic interests. The organization ~~((shall))~~ must be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization ~~((shall))~~ must work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other

appropriate private, public, or nonprofit community and economic development groups. The scope of services delivered under these contracts (~~shall~~) must include two broad areas of work:

(1) Direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance must comply with business recruitment and retention protocols established in section 1 of this act, and includes:

(a) Working with the appropriate partners throughout the county, including but not limited to, local governments, workforce development councils, port districts, community and technical colleges and higher education institutions, export assistance providers, the Washington manufacturing services, the Washington state quality award council, small business assistance programs, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services (~~in the~~) within the entire county;

(b) Providing information on state and local permitting processes, tax issues, export assistance, and other essential information for operating, expanding, or locating a business in Washington;

(c) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(d) Working with businesses on site location and selection assistance;

(e) Providing business retention and expansion services throughout the county, including business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses; (~~and~~)

(f) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; and

(g) Providing or facilitating the provision of export assistance through workshops or one-on-one assistance; and

(2) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies, that support increased living standards and increase foreign direct investment throughout Washington. Activities include:

(a) Participation in regional planning efforts with workforce development councils involving coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts (~~shall~~) must include, but not be limited to, assistance to industry clusters in the region;

(b) Participation between the contracting organization and the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in providing for the coordination of the job skills training program and the customized training program within its region;

(c) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department (~~shall~~) must consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic

analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(d) In conjunction with other governmental jurisdictions and institutions, participate in the development of a countywide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission.

Sec. 3. RCW 43.330.082 and 2009 c 518 s 15 are each amended to read as follows:

(1)(a) Contracting associate development organizations (~~shall~~) must provide the department with measures of their performance. Annual reports (~~shall~~) must include information on the impact of the contracting organization on employment, wages, tax revenue, and capital investment. Specific measures (~~shall~~) must be developed in the contracting process between the department and the contracting organization every two years. Except as provided in (b) of this subsection, performance measures should be consistent across regions to allow for statewide evaluation.

(b) In addition to the measures required in (a) of this subsection, contracting associate development organizations in counties with a population greater than one million five hundred thousand persons must include the following measures in reports to the department:

(i) The number of small businesses that received retention and expansion services, and the outcome of those services.

(ii) The number of businesses located outside of the boundaries of the largest city within the contracting associate development organization's region that received recruitment, retention, and expansion services, and the outcome of those services.

(2)(a) The department and contracting organizations (~~shall~~) must agree upon specific target levels for the performance measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance (~~shall~~) must occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures (~~shall~~) must develop remediation plans to address performance gaps. The remediation plans (~~shall~~) must include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.

(c) Contracts and state funding (~~shall~~) must be terminated for one year for organizations that fail to achieve the agreed upon progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations (~~shall~~) must review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department (~~shall~~) must report to the legislature and the Washington economic development commission by December 31st of each

even-numbered year on the performance results of the contracts with associate development organizations.

Sec. 4. RCW 43.330.010 and 2009 c 565 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) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

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

(3) "Director" means the director of the department of commerce.

(4) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business in this state under state or federal law.

(5) "Microenterprise development organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or other locally operated nonprofit entity that provides services to low-income entrepreneurs.

(6) "Small business" has the same meaning as provided in RCW 39.29.006.

(7) "Statewide microenterprise association" means a nonprofit entity with microenterprise development organizations as members that serves as an intermediary between the department of commerce and local microenterprise development organizations.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 287

[Substitute House Bill 1560]

HEALTH INSURANCE PARTNERSHIP

AN ACT Relating to the health insurance partnership; and amending RCW 70.47A.020, 70.47A.030, 70.47A.050, and 70.47A.110.

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

Sec. 1. RCW 70.47A.020 and 2008 c 143 s 1 are each amended to read as follows:

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

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means a partnership participant who:

(a) Is a resident of the state of Washington; and

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that has entered into an agreement with the partnership to purchase health benefits through the partnership. To participate in the partnership, an employer must attest to the fact that (a) the employer does not currently offer health insurance to its employees and has not offered insurance for at least six months, and (b) at least fifty percent of the employer's employees are low-wage workers.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means a participating small employer and employees of a participating small employer, and, except to the extent provided otherwise in RCW 70.47A.110(1)(e), a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums.

Sec. 2. RCW 70.47A.030 and 2009 c 257 s 1 are each amended to read as follows:

(1) To the extent funding is appropriated in the operating budget for this purpose or obtained through federal resources, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040.

(2) Consistent with policies adopted by the board under RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides(~~(-As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose)~~);

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among the health benefit plans offered through the partnership;

(c) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(e) Establish a mechanism to apply a surcharge to each health benefit plan purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans purchased through the partnership. Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature or resources received from the federal government to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

(f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter.

Sec. 3. RCW 70.47A.050 and 2007 c 260 s 12 are each amended to read as follows:

Enrollment in the health insurance partnership is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget or resources received from the federal government. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available.

Sec. 4. RCW 70.47A.110 and 2008 c 143 s 5 are each amended to read as follows:

(1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her

plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will be offered to participating small employers through the health insurance partnership and those plans that will qualify for premium subsidy payments. Up to five health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan accompanied by a health savings account. Every effort shall be made to include health benefit plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services, and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Develop policies related to partnership participant enrollment in health benefit plans. The board may focus its initial efforts on access to coverage and affordability of coverage for participating small employers and their employees. To the extent necessary for successful implementation of the partnership, ~~((during a start-up phase of partnership operation,))~~ the board may:

(i) Limit partnership participant health benefit plan choice; and

(ii) Offer former employees of participating small employers the opportunity to continue coverage after separation from employment to the extent that a former employee is eligible for continuation coverage under 29 U.S.C. Sec. 1161 et seq.

~~((The start-up phase may not exceed two years from the date the partnership begins to offer coverage));~~

(f) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group adjusted community rating methodology to health benefit plans purchased through the partnership on the principle of allowing each partnership participant to choose his or her health benefit plan, and may implement one or more risk adjustment or reinsurance mechanisms to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees;

(g) Determine whether the partnership should be designated as the administrator of a participating small employer health benefit plan and undertake the obligations required of a plan administrator under federal law in order to minimize administrative burdens on participating small employers;

(h) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors

under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business.

Passed by the House April 18, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 288

[Engrossed Second Substitute House Bill 1599]

PAY FOR ACTUAL STUDENT SUCCESS PROGRAM

AN ACT Relating to establishing the pay for actual student success dropout prevention program; amending RCW 28A.175.035; adding new sections to chapter 28A.175 RCW; adding a new section to chapter 28A.300 RCW; and creating new sections.

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

****NEW SECTION. Sec. 1. (1) The legislature finds that:***

(a) Providing students with the opportunity to graduate from high school with the knowledge and skills to be successful in today's world is now clearly part of Washington's definition of a basic education. Some students will only achieve this objective with supplemental interventions, support, and counseling;

(b) Dropout prevention is a fundamental strategy for strengthening society, building the economy, reducing crime, reducing government spending, and increasing individual freedom and opportunity;

(c) There are known and proven strategies to reduce the dropout rate, including ones that are successful for high-risk and troubled students. For example, the opportunity internship program, the jobs for America's graduates program, the building bridges program, and individualized student support services provided by the college success foundation have all had a measurable impact on helping at-risk students be successful in school. In addition, the Everett school district successfully increased its extended graduation rate from fifty-three percent in 2003 to ninety percent in 2010 by tracking the progress toward graduation of each student and assigning success coordinators to ensure students pursued all possible avenues to complete and make up credits. The Renton school district, through a combination of leadership, community partnerships and resources, and high expectations for all students, has increased its graduation rate to ninety percent, with ninety-six percent of graduating seniors in 2010 meeting proficiency on the state high school assessments. However, these types of models have never been brought to scale; and

(d) For every dropout prevented, the chances of that person committing a crime are reduced by twenty percent, and that person stands to increase his or her lifetime earnings by three hundred thousand dollars in today's dollars. In addition, for every dropout prevented, taxpayers save an estimated ten

thousand five hundred dollars per year for each year of the individual's life between the ages of twenty and sixty-five.

(2) Therefore, the state should use a dual strategy of making front-end investments in proven programs in order to expand them into an effective dropout prevention and intervention system, while simultaneously recognizing and rewarding actual success in reducing the dropout rate by investing a portion of the savings generated from each prevented dropout in the public schools.

(3) The legislature recognizes that the current fiscal climate in the state is a likely contributing factor to an increase in dropout rates. Reductions in state funding for schools are often felt first in student support services, counseling, supplemental instruction and tutoring, and increased class size, all of which affect struggling students. A poor economy negatively affects families through unemployment, uncertainty, and reduced public services, and students bring these stresses with them to school. If allowed to go unaddressed, these economic and fiscal circumstances are likely to slow or reverse progress on improving high school completion rates. Therefore, a concentrated effort at improvement is required at this time.

*Sec. 1 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.175 RCW to read as follows:

(1) The pay for actual student success (PASS) program is created under this section and sections 3 through 8 of this act to invest in proven dropout prevention and intervention programs as provided in section 3 of this act and provide a financial award for high schools that demonstrate improvement in the dropout prevention indicators established under section 4 of this act. The legislature finds that increased accumulation of credits and reductions in incidents of student discipline lead to improved graduation rates.

(2) The office of the superintendent of public instruction, the workforce training and education coordinating board, the building bridges working group, the higher education coordinating board, and the college scholarship organization under section 3(4) of this act shall collaborate to assure that the programs under section 3 of this act operate systematically and are expanded to include as many additional students and schools as possible.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.175 RCW to read as follows:

Subject to funds appropriated for this purpose, funds shall be allocated as specified in the omnibus appropriations act to support the PASS program through the following programs:

(1) The opportunity internship program under RCW 28C.18.160 through 28C.18.168;

(2) The jobs for America's graduates program administered through the office of the superintendent of public instruction;

(3) The building bridges program under RCW 28A.175.025, to be used to expand programs that have been implemented by building bridges partnerships and determined by the building bridges work group to be successful in reducing dropout rates, or to replicate such programs in new partnerships; and

(4) Individualized student support services provided by a college scholarship organization with expertise in managing scholarships for low-

income, high potential students and foster care youth under contract with the higher education coordinating board, including but not limited to college and career advising, counseling, tutoring, community mentor programs, and leadership development.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.175 RCW to read as follows:

(1) The office of the superintendent of public instruction, in consultation with the state board of education, must:

(a) Calculate the annual extended graduation rate for each high school, which is the rate at which a class of students enters high school as freshmen and graduates with a high school diploma, including students who receive a high school diploma after the year they were expected to graduate. The office may statistically adjust the rate for student demographics in the high school, including the number of students eligible for free and reduced price meals, special education and English language learner students, students of various racial and ethnic backgrounds, and student mobility;

(b) Annually calculate the proportion of students at grade level for each high school, which shall be measured by the number of credits a student has accumulated at the end of each school year compared to the total number required for graduation. For the purposes of this subsection (1)(b), the office shall adopt a standard definition of "at grade level" for each high school grade;

(c) Annually calculate the proportion of students in each high school who are suspended or expelled from school, as reported by the high school. In-school suspensions shall not be included in the calculation. Improvement on the indicator under this subsection (1)(c) shall be measured by a reduction in the number of students suspended or expelled from school; and

(d) Beginning with the 2012-13 school year, annually measure student attendance in each high school as provided under section 10 of this act.

(2) The office of the superintendent of public instruction may add dropout prevention indicators to the list of indicators under subsection (1) of this section, such as student grades, state assessment mastery, or student retention.

(3) To the maximum extent possible, the office of the superintendent of public instruction shall rely on data collected through the comprehensive education data and research system to calculate the dropout prevention indicators under this section and shall minimize additional data collection from schools and school districts unless necessary to meet the requirements of this section.

(4) The office of the superintendent of public instruction shall develop a metric for measuring the performance of each high school on the indicators under subsection (1) of this section that assigns points for each indicator and results in a single numeric dropout prevention score for each high school. The office shall weight the extended graduation rate indicator within the metric so that a high school does not qualify for an award under section 5 of this act without an increase in its extended graduation rate. The metric used through the 2012-13 school year shall include the indicators in subsection (1)(a) through (c) of this section and shall measure improvement against the 2010-11 school year as the baseline year. Beginning in the 2013-14 school year, the metric shall also include the indicator in subsection (1)(d) of this section, with improvement in this indicator measured against the 2012-13 school year as the baseline year.

The office may establish a minimum level of improvement in a high school's dropout prevention score for the high school to qualify for a PASS program award under section 5 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.175 RCW to read as follows:

(1)(a) Subject to funds appropriated for this purpose or otherwise available in the account established in section 7 of this act, beginning in the 2011-12 school year and each year thereafter, a high school that demonstrates improvement in its dropout prevention score compared to the baseline year as calculated under section 4 of this act may receive a PASS program award as provided under this section. The legislature intends to recognize and reward continuous improvement by using a baseline year for calculating eligibility for PASS program awards so that a high school retains previously earned award funds from one year to the next unless its performance declines.

(b) The office of the superintendent of public instruction must determine the amount of PASS program awards based on appropriated funds and eligible high schools. The intent of the legislature is to provide an award to each eligible high school commensurate with the degree of improvement in the high school's dropout prevention score and the size of the high school. The office must establish a minimum award amount. If funds available for PASS program awards are not sufficient to provide an award to each eligible high school, the office of the superintendent of public instruction shall establish objective criteria to prioritize awards based on eligible high schools with the greatest need for additional dropout prevention and intervention services. The office of the superintendent of public instruction shall encourage and may require a high school receiving a PASS program award to demonstrate an amount of community matching funds or an amount of in-kind community services to support dropout prevention and intervention.

(c) Ninety percent of an award under this section must be allocated to the eligible high school to be used for dropout prevention activities in the school as specified in subsection (2) of this section. The principal of the high school shall determine the use of funds after consultation with parents and certificated and classified staff of the school.

(d) Ten percent of an award under this section must be allocated to the school district in which the eligible high school is located to be used for dropout prevention activities as specified in subsection (2) of this section in the high school or in other schools in the district.

(e) The office of the superintendent of public instruction may withhold distribution of award funds under this section to an otherwise eligible high school or school district if the superintendent of public instruction issues a finding that the school or school district has willfully manipulated the dropout prevention indicators under section 4 of this act, for example by expelling, suspending, transferring, or refusing to enroll students at risk of dropping out of school or at risk of low achievement.

(2) High schools and school districts may use PASS program award funds for any programs or activities that support the development of a dropout prevention, intervention, and reengagement system as described in RCW 28A.175.074, offered directly by the school or school district or under contract with education agencies or community-based organizations, including but not

limited to educational service districts, workforce development councils, and boys and girls clubs. Such programs or activities may include but are not limited to the following:

(a) Strategies to close the achievement gap for disadvantaged students and minority students;

(b) Use of graduation coaches as defined in section 6 of this act;

(c) Opportunity internship activities under RCW 28C.18.164;

(d) Dropout reengagement programs provided by community-based organizations or community and technical colleges;

(e) Comprehensive guidance and planning programs as defined under RCW 28A.600.045, including but not limited to the navigation 101 program;

(f) Reduced class sizes, extended school day, extended school year, and tutoring programs for students identified as at risk of dropping out of school, including instruction to assist these students in meeting graduation requirements in mathematics and science;

(g) Outreach and counseling targeted to students identified as at risk of dropping out of school, or who have dropped out of school, to encourage them to consider learning alternatives such as preapprenticeship programs, skill centers, running start, technical high schools, and other options for completing a high school diploma;

(h) Preapprenticeship programs or running start for the trades initiatives under RCW 49.04.190;

(i) Mentoring programs for students;

(j) Development and use of dropout early warning data systems;

(k) Counseling, resource and referral services, and intervention programs to address social, behavioral, and health factors associated with dropping out of school;

(l) Implementing programs for in-school suspension or other strategies to avoid excluding middle and high school students from the school whenever possible;

(m) Parent engagement activities such as home visits and off-campus parent support group meetings related to dropout prevention and reengagement; and

(n) Early learning programs for prekindergarten students.

(3) High schools and school districts are encouraged to implement dropout prevention and reengagement strategies in a comprehensive and systematic manner, using strategic planning, school improvement plans, evaluation and feedback, and response to intervention tools.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.175 RCW to read as follows:

For the purposes of section 5 of this act, a "graduation coach" means a staff person, working in consultation with counselors, who is assigned to identify and provide intervention services to students who have dropped out or are at risk of dropping out of school or of not graduating on time through the following activities:

(1) Monitoring and advising on individual student progress toward graduation;

(2) Providing student support services and case management;

(3) Motivating students to focus on a graduation plan;

(4) Encouraging parent and community involvement;

- (5) Connecting parents and students with appropriate school and community resources;
- (6) Securing supplemental academic services for students;
- (7) Implementing schoolwide dropout prevention programs and interventions; and
- (8) Analyzing data to identify at-risk students.

NEW SECTION. Sec. 7. A new section is added to chapter 28A.175 RCW to read as follows:

The high school completion account is created in the custody of the state treasurer. Revenues to the account shall consist of appropriations made by the legislature, federal funds, gifts or grants from the private sector or foundations, and other sources deposited in the account. Expenditures from the account may be used only for proven dropout prevention and intervention programs identified under section 3 of this act and to make PASS program awards under section 5 of this act. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 8. A new section is added to chapter 28A.175 RCW to read as follows:

The office of the superintendent of public instruction must regularly inform high schools and school districts about the opportunities under section 3 of this act to receive funding to implement programs that have been proven to reduce dropout rates and increase graduation rates, as well as the opportunities under section 5 of this act for high schools to receive a financial incentive for success. Within available funds, the office shall develop systemic, ongoing strategies for identifying and disseminating successful dropout prevention and reengagement programs and strategies and for incorporating dropout prevention and reengagement into high school and school district strategic planning and improvement. The office may offer support and assistance to schools and districts through regional networks. The office shall make every effort to keep dropout prevention and reduction of the dropout rate a top priority for school directors, administrators, and teachers.

Sec. 9. RCW 28A.175.035 and 2007 c 408 s 3 are each amended to read as follows:

- (1) The office of the superintendent of public instruction shall:
 - (a) Identify criteria for grants and evaluate proposals for funding in consultation with the workforce training and education coordinating board;
 - (b) Develop and monitor requirements for grant recipients to:
 - (i) Identify students who both fail the Washington assessment of student learning and drop out of school;
 - (ii) Identify their own strengths and gaps in services provided to youth;
 - (iii) Set their own local goals for program outcomes;
 - (iv) Use research-based and emerging best practices that lead to positive outcomes in implementing the building bridges program; and
 - (v) Coordinate an outreach campaign to bring public and private organizations together and to provide information about the building bridges program to the local community;

(c) In setting the requirements under (b) of this subsection, encourage creativity and provide for flexibility in implementing the local building bridges program;

(d) Identify and disseminate successful practices;

(e) Develop requirements for grant recipients to collect and report data, including, but not limited to:

(i) The number of and demographics of students served including, but not limited to, information regarding a student's race and ethnicity, a student's household income, a student's housing status, whether a student is a foster youth or youth involved in the juvenile justice system, whether a student is disabled, and the primary language spoken at a student's home;

(ii) Washington assessment of student learning scores;

(iii) Dropout rates;

(iv) On-time graduation rates;

(v) Extended graduation rates;

(vi) Credentials obtained;

(vii) Absenteeism rates;

(viii) Truancy rates; and

(ix) Credit retrieval;

(f) Contract with a third party to evaluate the infrastructure and implementation of the partnership including the leveraging of outside resources that relate to the goal of the partnership. The third-party contractor shall also evaluate the performance and effectiveness of the partnerships relative to the type of entity, as identified in RCW 28A.175.045, serving as the lead agency for the partnership; and

(g) Report to the legislature by December 1, 2008.

(2) In performing its duties under this section, the office of the superintendent of public instruction is encouraged to consult with the work group identified in RCW 28A.175.075.

(3) In selecting recipients for grant funds appropriated under section 3 of this act, the office of the superintendent of public instruction shall use a streamlined and expedited application and review process for those programs that have already proven to be successful in dropout prevention.

NEW SECTION. Sec. 10. A new section is added to chapter 28A.300 RCW to read as follows:

(1)(a) The superintendent of public instruction shall adopt rules establishing a standard definition of student absence from school. In adopting the definition, the superintendent shall review current practices in Washington school districts, definitions used in other states, and any national standards or definitions used by the national center for education statistics or other national groups. The superintendent shall also consult with the building bridges work group established under RCW 28A.175.075.

(b) Using the definition of student absence adopted under this section, the superintendent shall establish an indicator for measuring student attendance in high schools for purposes of the PASS program under section 2 of this act.

(2)(a) The K-12 data governance group under RCW 28A.300.507 shall establish the parameters and an implementation schedule for statewide collection through the comprehensive education and data research system of: (i) Student attendance data using the definitions of student absence adopted under this

section; and (ii) student discipline data with a focus on suspensions and expulsions from school.

(b) At a minimum, school districts must collect and submit student attendance data and student discipline data for high school students through the comprehensive education and data research system for purposes of the PASS program under section 2 of this act beginning in the 2012-13 school year.

NEW SECTION. Sec. 11. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2011, in the omnibus appropriations act, this act is null and void.

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 10, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 11, 2011.

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

"I am returning herewith, without my approval as to Section 1, Engrossed Second Substitute House Bill 1599 entitled:

"AN ACT Relating to establishing the pay for actual student success dropout prevention program."

To the extent funding is provided in the appropriations act by June 30, 2011, this legislation provides resources to schools and school districts that improve various student engagement and success factors that lead to more high school graduations. The legislation sets forth the data used to determine whether schools and districts are eligible for the incentives authorized.

Section 1 is an intent section that discusses various experiences of schools and principles of law, and is not necessary to interpret or implement the substantive provisions of the bill. For this reason, I have vetoed Section 1 of Engrossed Second Substitute House Bill 1599.

With the exception of Section 1, Engrossed Second Substitute House Bill 1599 is approved."

CHAPTER 289

[Engrossed Substitute House Bill 1716]

SECONDHAND DEALERS—PRECIOUS METALS

AN ACT Relating to the regulation of secondhand dealers; amending RCW 19.60.010 and 19.60.085; adding new sections to chapter 19.60 RCW; 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:

(1) The market price of gold has increased significantly in recent years and there has been a proliferation of secondhand dealers, including temporary, transient secondhand businesses, engaging in "cash for gold" type precious metal transactions. Frequently, these "cash for gold" type operations are operated by persons desiring to exploit unsuspecting consumers based on current market conditions;

(2) The increasing number of "cash for gold" type transactions in communities and neighborhoods throughout Washington has been linked to increased crimes involving the theft of gold and other precious metal objects, including home burglaries, robberies, and other crimes, resulting in depressed

home values and other threats to the health, safety, and welfare of Washington state residents; and

(3) With the growing number of precious metal transactions, there is a corresponding significant increase in the number of "cash for gold" type storefront businesses, including temporary, transient secondhand businesses, in Washington state which may not be consistent with the quality of life and personal security sought by communities and neighborhoods and the state as a whole.

Therefore, to better protect legitimate owners, consumers, and secondhand dealers, the legislature intends to establish and implement stricter standards relating to transactions involving property consisting of gold and other precious metals.

Sec. 2. RCW 19.60.010 and 1995 c 133 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) "Melted metals" means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(2) "Metal junk" means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(3) "Nonmetal junk" means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(4) "Pawnbroker" means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(5) "Precious metals" means gold, silver, and platinum.

(6) "Secondhand dealer" means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, secondhand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Secondhand dealer also includes persons or entities conducting business, more than three times per year, at flea markets or swap meets(~~more than three times per year~~).

(7) "Secondhand precious metal dealer" means any person or entity engaged in whole or in part in the commercial activity or business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, more than three times per year, secondhand property that is a precious metal, whether or not the person or entity maintains a permanent or fixed place of business within the state, or engages in the business at flea markets or swap meets. The terms "precious metal" and "secondhand property," for purposes of transactions by a secondhand precious metal dealer, do not include: (a) Gold, silver, or platinum coins, or other precious metal coins, that are legal tender, or precious metal coins that have numismatic or precious metal value. (b) gold, silver, platinum, or other

precious metal bullion, or (c) gold, silver, platinum, or other precious metal dust, flakes, or nuggets.

~~(8)~~ (8) "Secondhand property" means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

~~((8))~~ (9) "Transaction" means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a secondhand dealer from a member of the general public.

~~((9))~~ (10) "Loan period" means the period of time from the date the loan is made until the date the loan is paid off, the loan is in default, or the loan is refinanced and new loan documents are issued, including all grace or extension periods.

NEW SECTION. Sec. 3. (1) For any transaction involving property consisting of a precious metal bought or received from an individual, every secondhand precious metal dealer doing business in this state shall maintain wherever that business is conducted a record in which shall be legibly written in the English language, at the time of each transaction, the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The time and date of the transaction;
- (c) The name of the person or employee or the identification number of the person or employee conducting the transaction;
- (d) The name, date of birth, sex, height, weight, race, and residential address and telephone number of the person with whom the transaction is made;
- (e) A complete description of the precious metal property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color of stone or stones;
- (f) The price paid;
- (g) The type and identifying number of identification used by the person with whom the transaction was made, which shall consist of a valid driver's license or identification card issued by any state or two pieces of identification issued by a governmental agency, one of which shall be descriptive of the person identified, and a full copy of both sides of each piece of identification used by the person with whom the transaction was made. At all times, one piece of current government issued picture identification will be required; and
- (h) The nature of the transaction, a number identifying the transaction, the store identification as designated by the applicable law enforcement agency, or the name and address of the business or location, including the street address, and room number if appropriate, and the name of the person or employee conducting the transaction, and the location of the property.

(2) The records required in subsection (1) of this section shall at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, be open to the inspection by any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that business is conducted for three years following the date of the transaction.

NEW SECTION. Sec. 4. (1) Property consisting of a precious metal bought or received from an individual on consignment by any secondhand precious metal dealer with a permanent place of business in the state may not be removed from that place of business except consigned property returned to the owner, for a total of thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions.

(2) Property consisting of a precious metal bought or received from an individual on consignment by any secondhand precious metal dealer without a permanent place of business in the state must be stored and held within the city or county in which the property was received, except consigned property returned to the owner, for a total of thirty days after receipt of the property. The property shall be available within the appropriate jurisdiction for inspection at reasonable times by any commissioned law enforcement officer of the state or any of its political subdivisions.

(3) Subsections (1) and (2) of this section do not apply when the property consisting of a precious metal was bought or received from a pawn shop, jeweler, secondhand dealer, or secondhand precious metal dealer who must provide a signed declaration showing the property is not stolen. The declaration may be included as part of the transactional record required under this subsection, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

NEW SECTION. Sec. 5. If the applicable chief of police or the county's chief law enforcement officer has compiled and published a list of persons who have been convicted of any crime involving theft, then a secondhand precious metal dealer shall utilize such a list for any transaction involving property other than property consisting of a precious metal as required by the applicable chief of police or the county's chief law enforcement officer.

NEW SECTION. Sec. 6. No secondhand precious metal dealer doing business in this state may operate a business without first obtaining a business license from the local government in which the business is situated.

NEW SECTION. Sec. 7. (1) It is a gross misdemeanor for:

(a) A secondhand precious metal dealer 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 sections 3 through 6 and 9 of this act involving property consisting of precious metal;

(b) A secondhand precious metal dealer to receive any precious metal property from any person known to the secondhand precious metal dealer as having been convicted of burglary, robbery, theft, or possession of or receiving stolen property within the past ten years whether the person is acting in his or her own behalf or as the agent of another; or

(c) A secondhand precious metal dealer to knowingly violate any other provision relating to precious metals under sections 3 through 6 and 9 of this act.

(2) It is a class C felony for a secondhand precious metal dealer to commit a second or subsequent violation of subsection (1) of this section involving property consisting of a precious metal.

Sec. 8. RCW 19.60.085 and 2000 c 171 s 56 are each amended to read as follows:

The provisions of this chapter do not apply to transactions conducted by the following:

- (1) Motor vehicle dealers licensed under chapter 46.70 RCW;
- (2) Vehicle wreckers ~~((or))~~, hulk haulers, and scrap processors licensed under chapter 46.79 or 46.80 RCW;
- (3) Persons giving an allowance for the trade-in or exchange of secondhand property on the purchase of other merchandise of the same kind of greater value; and
- (4) Persons in the business of buying or selling empty food and beverage containers or metal or nonmetal junk, in compliance with chapter 19.290 RCW.

NEW SECTION. Sec. 9. (1) For purposes of this section, "hosted home party" means a gathering of persons at a private residence where a host or hostess has invited friends or other guests into his or her residence where individual person-to-person sales of precious metals occur.

(2) A host or hostess must be the owner, renter, or lessee of the private residence where the hosted home party takes place.

(3) A secondhand precious metal dealer who attends a hosted home party and purchases or sells precious metals from the invited guests must issue a receipt for each item sold or purchased at the hosted home party.

(4) The secondhand precious metal dealer must include on every receipt the following: (a) The name, residential address, telephone number, and driver's license number of the person hosting the home party; (b) The name, residential address, telephone number, and driver's license number of the person selling the item; (c) the name, residential address, telephone number, and driver's license number of the person purchasing the item; (d) a complete description of the item being sold, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color of stone or stones; (e) time and date of the transaction; and (f) the amount and form of any consideration paid for the item.

(5) The secondhand precious metal dealer must make four copies of each transaction receipt: One for the seller, one for the host or hostess, one for the purchaser, and one for local authorities, if they should ask. The secondhand precious metal dealer and the host shall maintain copies of all transaction receipts and records for three years following the date of the precious metal transaction.

(6) A secondhand precious metal dealer of a hosted home party who purchases precious metals at a hosted home party and complies with this section is otherwise exempt from sections 3, 4, and 5 of this act.

NEW SECTION. Sec. 10. Sections 3 through 7 and 9 of this act are each added to chapter 19.60 RCW.

Passed by the House April 13, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor May 10, 2011.
Filed in Office of Secretary of State May 11, 2011.

CHAPTER 290

[Engrossed Substitute House Bill 1725]

WORKER'S COMPENSATION—ADMINISTRATION

AN ACT Relating to administrative efficiencies for the workers' compensation program; amending RCW 51.04.030, 51.04.082, 51.24.060, 51.32.240, 51.48.120, 51.48.150, and 51.52.050; adding a new section to chapter 51.18 RCW; and adding a new section to chapter 51.36 RCW.

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

Sec. 1. RCW 51.04.030 and 2004 c 65 s 1 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, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, 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 statewide 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, licensed advanced registered nurse practitioner, 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 and its associated billing or payment instructions and policies constitute a "rule" as used in RCW 34.05.010(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.

Sec. 2. RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as follows:

Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. If requested by the employer, any notice or order may be sent by secure electronic means except orders communicating the closure of a claim. Correspondence and notices sent electronically are considered received on the date sent by the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon.

NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW to read as follows:

Payment by an employer for direct primary care services as defined in RCW 48.150.010 when used for medical services on an allowed industrial injury or occupational disease claim does not disqualify: (1) The employer from participating in a retrospective rating plan; (2) any related group sponsor from promoting a retrospective rating plan; or (3) any related plan administrator from administering a retrospective rating plan, provided the employer or group sponsor or plan administrator provides any medical cost or payment information that may be required by the department. Prior to the first retrospective rating adjustment for the plan year beginning January 1, 2012, the department shall determine the information needed and any changes to the retrospective rating premium and claim cost calculations to maintain appropriate and equitable retrospective rating refunds when employers pay for direct primary care services. These changes shall apply beginning with the January 1, 2012, plan year.

The department may adopt rules to implement this section.

Sec. 4. RCW 51.24.060 and 2001 c 146 s 9 are each amended to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by ~~((registered or certified mail))~~ a method for which receipt can be confirmed or tracked, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which 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 such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served

with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

NEW SECTION. Sec. 5. A new section is added to chapter 51.36 RCW to read as follows:

The department shall report to the appropriate committees of the legislature by December 1, 2011, on statutory changes needed to ensure an injured worker may receive care from a health care provider who furnishes primary care services through a direct agreement in compliance with chapter 48.150 RCW and that the injured worker is not paying directly for medical services related to their industrial injury or occupational disease. The report shall provide a timeline for rule development with a goal to have necessary changes in place by July 1, 2013, and include the data required from direct care providers necessary to establish premium rates, experience modification factors, and retrospective rating adjustments; medical cost or payment information that may be required from retrospective rating participants; any requirements specific to direct primary care providers in order for them to participate in the statewide medical provider network and to ensure the department has information to efficiently manage worker claims; and any other issues or barriers to participation of direct primary care providers in the workers' compensation system.

Sec. 6. RCW 51.32.240 and 2008 c 280 s 2 are each amended to read as follows:

(1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of

any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the

department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the

same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which 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 worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by ~~((certified mail))~~ a method for which receipt can be confirmed or tracked accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the

full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer.

Sec. 7. RCW 51.48.120 and 1995 c 160 s 5 are each amended to read as follows:

If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by ~~((certified mail))~~ a method for which receipt can be confirmed or tracked to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

Sec. 8. RCW 51.48.150 and 1995 c 160 s 6 are each amended to read as follows:

The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by ~~((certified mail, return receipt requested))~~ a method for which receipt can be confirmed or tracked, or by any

duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order 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 director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

Sec. 9. RCW 51.52.050 and 2008 c 280 s 1 are each amended to read as follows:

(1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, ~~((which shall be addressed to such person at his or her last known address as shown by the records of the department))~~ or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker,

shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellants shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 291

[House Bill 1726]

WORKER'S COMPENSATION—VOCATIONAL REHABILITATION

AN ACT Relating to recommendations of the vocational rehabilitation subcommittee for workers' compensation; amending RCW 51.32.095 and 51.32.099; and providing an expiration date.

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

Sec. 1. RCW 51.32.095 and 2007 c 72 s 1 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection ~~((3))~~ (4) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;

- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4).

(4)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period (~~except as authorized by RCW 51.60.060~~), and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period (~~except as authorized by RCW 51.60.060~~), and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after

his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

~~((4))~~ (5) In addition to the vocational rehabilitation expenditures provided for under subsection ~~((3))~~ (4) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

~~((5))~~ (6) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections ~~((3))~~ (4) and ~~((4))~~ (5) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, 2013, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

~~((6))~~ (7) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

~~((7))~~ (8) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section and RCW 51.32.099.

~~((8))~~ (9) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.099, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

~~((9))~~ (10) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes.

Sec. 2. RCW 51.32.099 and 2009 c 353 s 5 are each amended to read as follows:

(1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in

developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. ~~((To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability~~

~~compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer. Following the fifteen-day period, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.))~~ However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan ((by the department)) or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section

shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department shall thereafter close the claim. A worker who elects option 2 benefits shall not be entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of

the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

NEW SECTION. Sec. 3. This act expires June 30, 2013.

Passed by the House March 5, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 292

[Engrossed Substitute House Bill 1774]

DEPENDENT CHILDREN—PLACEMENT—PARENTAL RIGHTS—GUARDIANS AD LITEM

AN ACT Relating to dependency matters; amending RCW 13.34.130, 13.34.215, 26.33.070, 26.09.220, 26.12.175, and 26.12.177; and adding a new section to chapter 26.12 RCW.

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

Sec. 1. RCW 13.34.130 and 2010 c 288 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 social study 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))~~) that maintains the child in 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 determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in 25 U.S.C. Sec. 1903, to be removed from his or her home unless the court finds, by clear and convincing evidence

including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.

(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in ~~((this))~~ subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

~~((2))~~ (4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.34.250 and in 25 U.S.C. Sec. 1915.

~~((3))~~ (5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section 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, including housing assistance, 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:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) 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.

~~((4))~~ (6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

~~((5))~~ (7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

~~((6))~~ (8) 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 requirements of RCW 13.34.132 are met.

~~((7))~~ (9) 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 or other suitable person, the child shall remain in foster care and the court shall direct the department or 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 or other person 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 or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person 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, sibling 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 or other suitable person's home, subject to review by the court.

Sec. 2. RCW 13.34.215 and 2010 c 180 s 4 are each amended to read as follows:

(1) A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

(a) The child was previously found to be a dependent child under this chapter;

(b) The child's parent's rights were terminated in a proceeding under this chapter;

(c)(i) The child has not achieved his or her permanency plan (~~within three years of a final order of termination~~); or

(ii) While the child achieved a permanency plan, it has not since been sustained;

(d) Three years have passed since the final order of termination was entered;
and

~~((d))~~ (e) The child must be at least twelve years old at the time the petition is filed. Upon the child's motion for good cause shown, or on its own motion, the court may hear a petition filed by a child younger than twelve years old.

(2) If the child is eligible to petition the juvenile court under subsection (1) of this section and a parent whose rights have been previously terminated contacts the department or supervising agency or the child's guardian ad litem regarding reinstatement, the department or supervising agency or the guardian ad litem must notify the eligible child about his or her right to petition for reinstatement of parental rights.

(3) A child seeking to petition under this section shall be provided counsel at no cost to the child.

(4) The petition must be signed by the child in the absence of a showing of good cause as to why the child could not do so.

(5) If, after a threshold hearing to consider the parent's apparent fitness and interest in reinstatement of parental rights, the court finds by a preponderance of the evidence that the best interests of the child may be served by reinstatement of parental rights, the juvenile court shall order that a hearing on the merits of the petition be held.

(6) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department or the supervising agency, the child's attorney, and the child. The court shall also order the department or supervising agency to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the petition, any parent whose rights have not been terminated, the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(7) The juvenile court shall conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:

(a) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;

(b) The age and maturity of the child, and the ability of the child to express his or her preference;

(c) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and

(d) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(8) In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the department or supervising agency shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

(9)(a) If the court conditionally grants the petition under subsection (7) of this section, the case will be continued for six months and a temporary order of reinstatement entered. During this period, the child shall be placed in the custody of the parent. The department or supervising agency shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate.

(b) If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(c) If the child has been successfully placed with the parent for six months, the court order reinstating parental rights remains in effect and the court shall dismiss the dependency.

(10) After the child has been placed with the parent for six months, the court shall hold a hearing. If the placement with the parent has been successful, the court shall enter a final order of reinstatement of parental rights, which shall restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The court shall dismiss the dependency and direct the clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(11) The granting of the petition under this section does not vacate or otherwise affect the validity of the original termination order.

(12) Any parent whose rights are reinstated under this section shall not be liable for any child support owed to the department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other services provided to a child for the time period from the date of termination of parental rights to the date parental rights are reinstated.

(13) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights and reunification is now appropriate.

(14) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(15) The state, the department, the supervising agency, and its employees are not liable for civil damages resulting from any act or omission in the provision of services under this section, unless the act or omission constitutes

gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists. This section does not create a cause of action against the state, the department, the supervising agency, or its employees concerning the original termination.

Sec. 3. RCW 26.33.070 and 1984 c 155 s 7 are each amended to read as follows:

(1) The court shall appoint a guardian ad litem for any parent or alleged father under eighteen years of age in any proceeding under this chapter. The court may appoint a guardian ad litem for a child adoptee or any incompetent party in any proceeding under this chapter. The guardian ad litem for a parent or alleged father, in addition to determining what is in the best interest of the party, shall make an investigation and report to the court concerning whether any written consent to adoption or petition for relinquishment signed by the parent or alleged father was signed voluntarily and with an understanding of the consequences of the action. If the child to be relinquished is a dependent child under chapter 13.34 RCW and the minor parent is represented by an attorney or guardian ad litem in the dependency proceeding, the court may rely on the minor parent's dependency court attorney or guardian ad litem to make a report to the court as provided in this subsection.

(2) The court in the county in which a petition is filed shall direct who shall pay the fees of a guardian ad litem or attorney appointed under this chapter and shall approve the payment of the fees. If the court orders the parties to pay the fees of the guardian ad litem, the fees must be established pursuant to the procedures in RCW 26.12.183.

Sec. 4. RCW 26.09.220 and 1993 c 289 s 1 are each amended to read as follows:

(1)(a) The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, court-appointed special advocate, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(b) An investigator is a person appointed as an investigator under RCW 26.12.050(1)(b) or any other third-party professional ordered or appointed by the court to provide an opinion, assessment, or evaluation regarding the creation or modification of a parenting plan.

(2) In preparing the report concerning a child, the investigator or person appointed under subsection (1) of this section may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator or person appointed under subsection (1) of this section may refer the child to professional personnel for diagnosis. The investigator or person appointed under subsection (1) of this section may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the ~~((investigator's))~~ report by the investigator or person

appointed under subsection (1) of this section may be received in evidence at the hearing.

(3) The investigator or person appointed under subsection (1) of this section shall ~~((mail the investigator's))~~ provide his or her report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator or person appointed under subsection (1) of this section shall make available to counsel and to any party not represented by counsel ~~((the investigator's))~~ his or her file of underlying data and reports, complete texts of diagnostic reports made to the investigator or appointed person pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom ~~((the investigator))~~ he or she has consulted. Any party to the proceeding may call the investigator or person appointed under subsection (1) of this section and any person whom the investigator or appointed person has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

NEW SECTION. Sec. 5. A new section is added to chapter 26.12 RCW to read as follows:

(1) The court may appoint an investigator in addition to a guardian ad litem or court-appointed special advocate under RCW 26.12.175 and 26.12.177 to assist the court and make recommendations.

(2) An investigator is a person appointed as an investigator under RCW 26.12.050(1)(b) or any other third-party professional ordered or appointed by the court to provide an opinion, assessment, or evaluation regarding the creation or modification of a parenting plan.

(3) Investigators who are not supervised by a guardian ad litem or by a court-appointed special advocate program must comply with the training requirements applicable to guardians ad litem or court-appointed special advocates as provided under this chapter and court rule.

Sec. 6. RCW 26.12.175 and 2009 c 480 s 3 are each amended to read as follows:

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child.

(b) The guardian ad litem's role is to investigate and report factual information regarding the issues ordered to be reported or investigated to the court. The guardian ad litem shall always represent the best interests of the child. Guardians ad litem ~~((and investigators))~~ under this title may make recommendations based upon his or her investigation, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the

guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem (~~(or investigator)~~). The court shall consider any written responses to a report filed by the guardian ad litem (~~(or investigator)~~), including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services that are not inconsistent with this section.

(3) Each guardian ad litem program for compensated guardians ad litem and each court-appointed special advocate program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in dissolution, custody, paternity, and other family law proceedings;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
- (i) The results of an examination that shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050 and the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834. This background check shall be done through the Washington state patrol criminal identification section; and

(j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person appointed as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, court-appointed special advocate program or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The court shall immediately appoint the person recommended by the program.

(5) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

Sec. 7. RCW 26.12.177 and 2009 c 480 s 4 are each amended to read as follows:

(1) All guardians ad litem (~~and investigators~~) appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem (~~and investigators~~) appointed under this title must have additional relevant training under RCW 2.56.030(15) (~~and as recommended under RCW 2.53.040,~~) when it is available.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem (~~and investigators~~) under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem (~~and investigators~~) under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information record as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem is inappropriate or unqualified, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who has been found to have misrepresented his or her qualifications.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

Passed by the House April 15, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 293

[Engrossed Second Substitute House Bill 1789]

DRIVING UNDER THE INFLUENCE—OFFENDER ACCOUNTABILITY

AN ACT Relating to accountability for persons driving under the influence of alcohol or drugs; amending RCW 46.20.385, 46.61.502, 46.61.504, 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140, 9.94A.533, 2.28.190, 46.61.5056, and 46.61.5152; reenacting and amending RCW 46.61.5054; adding a new section to chapter 2.28 RCW; adding a new section to chapter 10.01 RCW; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.20.385 and 2010 c 269 s 1 are each amended to read as follows:

(1)(a) Beginning January 1, 2009, any person licensed under this chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or a violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after

his or her license is suspended, revoked, or denied. A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring on or after the effective date of this section, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (1)(c)(iii), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of

evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty-dollar fee to the department.

(b) The department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

Sec. 2. RCW 46.61.502 and 2008 c 282 s 20 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 0.08 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 0.08 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 0.08 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) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a)(~~7~~);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b)(~~7-8~~);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6).

Sec. 3. RCW 46.61.504 and 2008 c 282 s 21 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 0.08 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 0.08 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 0.08 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) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a)(~~;~~);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b)(~~;~~);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

Sec. 4. RCW 46.61.500 and 1990 c 291 s 1 are each amended to read as follows:

(1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment of not more than one year and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days.

(3)(a) Except as provided under (b) of this subsection, a person convicted of reckless driving who has one or more prior offenses as defined in RCW 46.61.5055(14) within seven years shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance.

(b) A person convicted of reckless driving shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug.

Sec. 5. RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read as follows:

(1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

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

(ii) Is shown by other evidence to have recently consumed liquor.

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

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

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

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

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

(4) A person convicted of negligent driving in the first degree who has one or more prior offenses as defined in RCW 46.61.5055(14) within seven years shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person.

Sec. 6. RCW 46.20.720 and 2010 c 269 s 3 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. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from

being started. The court shall also establish the period of time for which interlock use will be required.

(2) Under RCW 46.61.5055 and subject to the exceptions listed in that statute, the court shall order any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department under RCW 46.20.385 and to have a functioning ignition interlock device installed on all motor vehicles operated by the person. The court shall order any person participating in a deferred prosecution program under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(3) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance. The department shall require that a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person.

The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. Subject to the provisions of subsections (4) and (5) of this section, the period of time of the restriction will be no less than:

(a) For a person who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.

(4) A restriction imposed under subsection (3) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the four consecutive months prior to the date of release:

(a) An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more;

(b) Failure to take or pass any required retest; or

(c) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

(5) For a person required to install an ignition interlock device pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of the restriction shall be for six months and shall be subject to subsection (4) of this section.

Sec. 7. RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within 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. 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; 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.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within 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 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; 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 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.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within 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 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; 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 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.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; ~~((or))~~

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person apply for an ignition interlock driver's license if the court makes a specific finding in writing that:

(i) The person lives out-of-state and the devices are not reasonably available in the person's local area;

(ii) The person does not operate a vehicle; or

(iii) The person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an ignition interlock driver's license, has never had a driver's license, has been certified under chapter 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an ignition interlock driver's license.

(e) If a court finds that a person is not eligible to receive an ignition interlock driver's license under this section, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

(f) If the court orders that a person refrain from consuming any alcohol and requires the person to apply for an ignition interlock driver's license, and the person states that he or she does not operate a motor vehicle or the person is ineligible to obtain an ignition interlock driver's license, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. Alcohol monitoring ordered under this subsection must be for the period of the mandatory license suspension or revocation. The

person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(g) The period of time for which ignition interlock use (~~or alcohol monitoring~~) is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (g)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (g)(ii) of this subsection, a period of ten years.

(h) Beginning with incidents occurring on or after the effective date of this section, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (5)(h), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(7) 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 at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial 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.

(11)(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 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 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), (ii), or (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.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(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, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as 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, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as 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;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

Sec. 8. RCW 10.05.140 and 2004 c 95 s 1 are each amended to read as follows:

As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(~~((2))~~)(3) (a), (b), and (c). As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order.

Sec. 9. RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range 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 seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9A.01.010 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.01.010 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 standard sentence range 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 statutory 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 statutory 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 statutory 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, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9A.04.028(~~(4)~~)(3);

(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 standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. 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 standard sentence range for felony crimes committed after July 23, 1995, 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 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 standard sentence range 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 statutory 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 statutory 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 statutory 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, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(~~(4)~~)(3);

(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 standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. 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 standard sentence range if the offender or an accomplice committed the offense while in a county

jail or state correctional facility 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, 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 standard sentence range determined under subsection (2) of this section:

- (a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;
- (b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);
- (c) Twelve months for offenses committed under RCW 69.50.4013.

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 standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or ~~((9.94A.605))~~ 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range 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. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

- (i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;
- (ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;
- (iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(~~(4)~~)(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation 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;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range 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 one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

NEW SECTION. Sec. 10. A new section is added to chapter 2.28 RCW to read as follows:

(1) Counties may establish and operate DUI courts.

(2) For the purposes of this section, "DUI court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism of impaired driving among nonviolent, alcohol abusing offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic testing for alcohol use and, if applicable, drug use; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a DUI court program must first:

(i) Exhaust all federal funding that is available to support the operations of its DUI court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for DUI court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for DUI court operations and associated services. However, until June 30, 2014, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a DUI court established as of January 1, 2011.

(b) Any county that establishes a DUI court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The DUI court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from alcohol treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030, vehicular homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or an equivalent out-of-state offense; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) That is vehicular homicide or vehicular assault;

(D) During which the defendant used a firearm; or

(E) During which the defendant caused substantial or great bodily harm or death to another person.

Sec. 11. RCW 2.28.190 and 2005 c 504 s 502 are each amended to read as follows:

Any county that has established a DUI court, drug court, and a mental health court under this chapter may combine the functions of ~~((both))~~ these courts into a single therapeutic court.

Sec. 12. RCW 46.61.5054 and 1995 c 398 s 15 and 1995 c 332 s 13 are each reenacted and amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a ~~((one))~~ two hundred ~~((twenty-five))~~ dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol for grants and activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the ~~((one))~~ two hundred ~~((twenty-five))~~ dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and, subject to subsection (4) of this section, one hundred seventy-five dollars of the fee must be distributed as follows:

(a) Forty percent shall be subject to distribution under RCW 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit: Fifty percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and fifty percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs. Effective July 1, 1997, the remainder of the fee shall be forwarded to the state treasurer who shall deposit: Fifteen percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and eighty-five percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(3) Twenty-five dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety account to be used solely for funding Washington traffic safety commission grants to reduce statewide collisions caused by persons driving under the influence of alcohol or drugs. Grants awarded under this subsection may be for projects that encourage collaboration with other community, governmental, and private organizations.

and that utilize innovative approaches based on best practices or proven strategies supported by research or rigorous evaluation. Grants recipients may include, for example:

(a) DUI courts; and

(b) Jurisdictions implementing the victim impact panel registries under RCW 46.61.5152 and section 15 of this act.

(4) If the court has suspended payment of part of the fee pursuant to subsection (1)(b) or (c) of this section, amounts collected shall be distributed proportionately.

(5) This section applies to any offense committed on or after July 1, 1993.

Sec. 13. RCW 46.61.5056 and 1995 c 332 s 14 are each amended to read as follows:

(1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a program approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the court and the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under RCW 46.61.5055, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section.

Sec. 14. RCW 46.61.5152 and 2006 c 73 s 17 are each amended to read as follows:

In addition to penalties that may be imposed under RCW 46.61.5055, the court may require a person who is convicted of a nonfelony 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 nonfelony violation of RCW 46.61.502 or 46.61.504, to attend an educational program, such as a victim impact panel, focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants. The victim impact panel program must meet the minimum standards established under section 15 of this act.

NEW SECTION. Sec. 15. A new section is added to chapter 10.01 RCW to read as follows:

(1) The Washington traffic safety commission may develop and maintain a registry of qualified victim impact panels. When imposing a requirement that an offender attend a victim impact panel under RCW 46.61.5152, the court may refer the offender to a victim impact panel that is listed in the registry. The Washington traffic safety commission may consult with victim impact panel organizations to develop and maintain a registry.

(2) To be listed on the registry, the victim impact panel must meet the following minimum standards:

(a) The victim impact panel must address the effects of driving while impaired on individuals and families and address alternatives to drinking and driving and drug use and driving;

(b) The victim impact panel should strive to have at least two different speakers, one of whom is a victim survivor of an impaired driving crash, to present their stories in person. A victim survivor may be the panel facilitator. The victim impact panel should be a minimum of sixty minutes of presentation, not including registration and administration time.

(c) The victim impact panel shall have policies and procedures to recruit, screen, train, and provide feedback and ongoing support to the panelists. The panel shall take reasonable steps to verify the authenticity of each panelist's story;

(d) The victim impact panel shall charge a reasonable fee to all persons required to attend, unless otherwise ordered by the court;

(e) The victim impact panel shall have a policy to prohibit admittance of anyone under the influence of alcohol or drugs, or anyone whose actions or behavior are otherwise inappropriate. The victim impact panel may institute additional admission requirements;

(f) The victim impact panel shall maintain attendance records for at least five years;

(g) The victim impact panel shall make reasonable efforts to use a facility that meets standards established by the Americans with disabilities act;

(h) The victim impact panel may provide referral information to other community services; and

(i) The victim impact panel shall have a designated facilitator who is responsible for the compliance with these minimum standards and who is responsible for maintaining appropriate records and communication with the referring courts and probationary departments regarding attendance or nonattendance.

NEW SECTION. Sec. 16. Sections 1 through 9 of this act take effect September 1, 2011.

Passed by the House April 14, 2011.
 Passed by the Senate April 8, 2011.
 Approved by the Governor May 10, 2011.
 Filed in Office of Secretary of State May 11, 2011.

CHAPTER 294

[Substitute House Bill 1923]

FIREARMS—POSSESSION—CONCEALED PISTOLS

AN ACT Relating to requiring the denial of a concealed pistol license application when the applicant is ineligible to possess a firearm under federal law; and reenacting and amending RCW 9.41.070.

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

Sec. 1. RCW 9.41.070 and 2009 c 216 s 5 and 2009 c 59 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2)(a) The issuing authority shall ~~((check with the national crime information center))~~ conduct a check through the national instant criminal background check system, the Washington state patrol electronic database, the

department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm, or is prohibited from possessing a firearm under federal law, and therefore ineligible for a concealed pistol license.

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

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

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

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

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

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

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

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

The application shall contain questions about the applicant's eligibility under RCW 9.41.040 and federal law to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. If the applicant is not a United States citizen, the applicant must provide the applicant's country of citizenship, United States issued alien number or admission number, and the basis on which the applicant claims to be exempt from federal prohibitions on firearm possession by aliens. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

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

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

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

The fee shall be distributed as follows:

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

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

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

(d) Three dollars to the firearms range account in the general fund.

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

The renewal fee shall be distributed as follows:

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

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

(c) Three dollars to the firearms range account in the general fund.

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

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

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

(a) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

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

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary

emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

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

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

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

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

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

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

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state: (a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee.

Passed by the House March 2, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 295

[Second Substitute House Bill 1903]

CHILD CARE—LICENSEES AND EMPLOYEES—BACKGROUND CHECKS

AN ACT Relating to background checks for child care licensees and employees; amending RCW 43.215.215; reenacting and amending RCW 43.215.010; adding new sections to chapter 43.215 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 43.215 RCW to read as follows:

Subject to appropriation, the department of early learning shall establish and maintain an individual-based or portable background check clearance registry by July 1, 2012. Any individual seeking a child care license or employment in any child care facility licensed or regulated under current law shall submit a background application on a form prescribed by the department in rule.

Sec. 2. RCW 43.215.215 and 2007 c 415 s 5 are each amended to read as follows:

(1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of ~~((applicants))~~ individuals newly applying for an agency license, new licensees, their new employees, and other persons who newly have unsupervised access to children in care, ((and who have not resided in the state of Washington during the three-year period before being authorized to care for children,)) shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b) ~~((The fingerprint criminal history record checks shall be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record.))~~ (i) Effective July 1, 2012, all individuals applying for first-time agency licenses, all new employees, and other persons who have not been previously qualified by the department to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check pursuant to this section.

(ii) Persons required to be fingerprinted and obtain a criminal record check pursuant to this section must pay for the cost of this check as follows: The fee established by the Washington state patrol for the criminal background history check, including the cost of obtaining the fingerprints; and a fee paid to the department for the cost of administering the individual-based/portable background check clearance registry. The fee paid to the department must be deposited into the individual-based/portable background check clearance account established in section 5 of this act. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(c) The director shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or

agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose.

(e) No later than July 1, 2013, all agency licensees holding licenses prior to July 1, 2012, persons who were employees before July 1, 2012, and persons who have been qualified by the department before July 1, 2012, to have unsupervised access to children in care, must submit a new background application to the department. The department must require persons submitting a new background application pursuant to this subsection (2)(e) to pay a fee to the department for the cost of administering the individual-based/portable background check clearance registry. This fee must be paid into the individual-based/portable background check clearance account established in section 5 of this act. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(f) The department shall issue a background check clearance card or certificate to the applicant if after the completion of a background check the department concludes the applicant is qualified for unsupervised access to children in care. The background check clearance card or certificate is valid for three years from the date of issuance. A valid card or certificate must be accepted by a potential employer as proof that the applicant has successfully completed a background check as required under this chapter.

(g) The original applicant for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care shall submit a new background check application to the department, on a form and by a date as determined by the department.

(h) The applicant and agency shall maintain on-site for inspection a copy of the background check clearance card or certificate.

(i) Individuals who have been issued a background check clearance card or certificate shall report nonconviction and conviction information to the department within twenty-four hours of the event constituting the nonconviction or conviction information.

(j) The department shall investigate and conduct a redetermination of an applicant's or licensee's background clearance if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency. Subject to the requirements contained in RCW 43.215.300 and 43.215.305 and based on a determination that an individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may: (i) Invalidate the background card or certificate; or (ii) suspend, modify, or revoke any license authorized by this chapter.

Sec. 3. RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's

own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Department" means the department of early learning.

(5) "Director" means the director of the department.

(6) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(7) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

(8) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(9) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(10) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(11) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(12) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

NEW SECTION. Sec. 4. A new section is added to chapter 43.215 RCW to read as follows:

Effective July 1, 2011, all agency licensees shall pay the department a one-time fee established by the department. When establishing the fee, the

department must consider the cost of developing and administering the registry, and shall not set a fee which is estimated to generate revenue beyond estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in section 5 of this act and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 43.215 RCW to read as follows:

The individual-based/portable background check clearance account is created in the custody of the state treasurer. All fees collected pursuant to RCW 43.215.215 and section 4 of this act must be deposited in the account. Expenditures from the account may be made only for development and administration, and implementation of the individual-based/portable background check registry established in section 1 of this act. Only the director of the department of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 6. A new section is added to chapter 43.215 RCW to read as follows:

Upon resignation or termination with or without cause of any individual working in a child care agency, the child care agency shall report to the department within twenty-four hours if it has knowledge of the following with respect to the individual:

- (1) Any charge or conviction for a crime listed in WAC 170-06-0120;
- (2) Any other charge or conviction for a crime that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children or care; or
- (3) Any negative action as defined in RCW 43.215.010.

NEW SECTION. Sec. 7. To the extent that existing resources are available, the department of early learning, the office of the superintendent of public instruction, and educational service districts shall develop a proposal to coordinate their common background check activities. The proposal shall include the development of an information sharing system, or protocol, that will operate in accord with federal regulations. These agencies shall submit their proposal to the legislature no later than December 15, 2011.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 296

[Substitute Senate Bill 5504]

CHILD CARE SERVICES—UNLICENSED ACTIVITY

AN ACT Relating to unlicensed child care; amending RCW 43.215.300 and 43.215.370; adding a new section to chapter 43.215 RCW; creating a new section; and prescribing penalties.

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

Sec. 1. RCW 43.215.300 and 2007 c 17 s 2 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the director upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. RCW 43.215.305 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3)(a) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home.

(b) Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance.

(c) Civil monetary penalties shall not exceed (~~seventy-five~~) one hundred fifty dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(d) The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period.

(e) The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. RCW 43.215.307 governs notice of a civil monetary penalty and provides the right to an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status.

Sec. 2. RCW 43.215.370 and 2007 c 415 s 9 are each amended to read as follows:

For the purposes of reporting actions taken against agency licensees, upon the development of an early learning information system, the following actions shall be posted to the department's web site accessible by the public: Suspension, surrender, revocation, denial, stayed suspension, or reinstatement of a license. The department shall also post on the web site those agencies subject to licensing that have not initiated the licensing process within thirty days of the department's notification as required in RCW 43.215.300.

NEW SECTION. Sec. 3. A new section is added to chapter 43.215 RCW to read as follows:

When the department suspects that an agency is providing child care services without a license, it shall send notice to that agency within ten days. The notice shall include, but not be limited to, the following information:

- (1) That a license is required and the reasons why;
- (2) That the agency is suspected of providing child care without a license;
- (3) That the agency must immediately stop providing child care until the agency becomes licensed;
- (4) That the department can issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed;
- (5) That if the agency does not initiate the licensing process within thirty days of the date of the notice, the department will post on its web site that the agency is providing child care without a license.

NEW SECTION. Sec. 4. This act shall be known and cited as the Colby Thompson act.

Passed by the Senate April 18, 2011.

Passed by the House April 5, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 297

[Senate Bill 5625]

EARLY LEARNING PROVIDERS—NONEXPIRING LICENSE

AN ACT Relating to authorizing implementation of a nonexpiring license for early learning providers; and amending RCW 43.215.260, 43.215.290, and 43.215.270.

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

Sec. 1. RCW 43.215.260 and 2006 c 265 s 307 are each amended to read as follows:

(1) Each agency shall make application for a license or ((renewal of)) the continuation of a full license to the department on forms prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license or continuation of a full license within ninety days. A license or continuation shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with ((the {this})) this chapter, except that an initial license may be issued as provided in RCW 43.215.280. The department shall consider whether an agency is in good standing, as defined in subsection (4)(b) of this section, before granting a continuation of a full license. Full licenses provided for in this chapter shall ((be issued for a period of three years)) continue to remain valid so long as the licensee meets the requirements for a nonexpiring license in subsection (2) of this section. The licensee, however, shall advise the director of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed family day care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move.

(2) In order to qualify for a nonexpiring full license, a licensee must meet the following requirements on an annual basis as established from the date of initial licensure:

(a) Submit the annual licensing fee;

(b) Submit a declaration to the department indicating the licensee's intent to continue operating a licensed child care program, or the intent to cease operation on a date certain;

(c) Submit a declaration of compliance with all licensing rules; and

(d) Submit background check applications on the schedule established by the department.

(3) If a licensee fails to meet the requirements in subsection (2) of this section for continuation of a full license the license expires and the licensee must submit a new application for licensure under this chapter.

(4)(a) Nothing about the nonexpiring license process may interfere with the department's established monitoring practice.

(b) For the purpose of this section, an agency is considered to be in good standing if in the intervening period between monitoring visits the agency does not have any of the following:

(i) Valid complaints;

(ii) A history of noncompliance related to those valid complaints or pending from prior monitoring visits; or

(iii) Other information that when evaluated would result in a finding of noncompliance with this section.

(c) The department shall consider whether an agency is in good standing when determining the most appropriate approach and process for monitoring visits, for the purposes of administrative efficiency while protecting children, consistent with this chapter. If the department determines that an agency is not in good standing, the department may issue a probationary license, as provided in RCW 43.215.290.

Sec. 2. RCW 43.215.290 and 2006 c 265 s 310 are each amended to read as follows:

(1) The department may issue a probationary license to a licensee who has had ~~((a))~~ an initial, expiring, or other license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) Before issuing a probationary license, the department shall, in writing, refer the licensee to the child care resource and referral network or other appropriate resource for technical assistance. The department may issue a probationary license pursuant to subsection (1) of this section if within fifteen working days after the department has sent its referral:

(a) The licensee, in writing, has refused the department's referral for technical assistance; or

(b) The licensee has failed to respond in writing to the department's referral for technical assistance.

(3) If the licensee accepts the department's referral for technical assistance issued under subsection (2) of this section, the department, the licensee, and the technical assistance provider shall meet within thirty days after the licensee's acceptance. The licensee and the department, in consultation with the technical assistance provider, shall develop a plan to correct the areas of noncompliance identified by the department. If, after sixty days, the licensee has not corrected the areas of noncompliance identified in the plan developed in consultation with the technical assistance provider, the department may issue a probationary license pursuant to subsection (1) of this section.

(4) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

~~((3))~~ (5) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

~~((4))~~ (6) An existing license is invalidated when a probationary license is issued.

~~((5))~~ (7) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

~~((6))~~ (8) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license.

Sec. 3. RCW 43.215.270 and 2006 c 265 s 308 are each amended to read as follows:

(1) If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days before the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department acts.

(2) License renewal under this section does not apply to nonexpiring licenses described in RCW 43.215.260.

Passed by the Senate April 21, 2011.

Passed by the House April 20, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 298

[Substitute House Bill 2017]

MASTER LICENSE SERVICE PROGRAM

AN ACT Relating to the master license service program; amending RCW 19.02.020, 19.02.030, 19.02.050, 19.02.070, 19.02.075, 19.02.100, 19.02.800, 19.02.900, 19.80.005, 19.80.010, 19.80.025, 19.80.045, 19.80.075, 19.80.900, 19.94.015, 34.05.310, 34.05.328, 35.21.392, 35A.21.340, 43.07.200, 46.68.060, 46.72.110, 46.72A.110, 59.30.010, 59.30.020, 59.30.050, 59.30.060, 76.48.121, 79A.60.485, 82.01.060, 82.02.010, 82.32.030, 90.76.010, and 90.76.020; reenacting and amending RCW 43.24.150; adding a new section to chapter 19.02 RCW; adding a new section to chapter 59.30 RCW; creating new sections; decodifying RCW 19.02.901 and 19.02.910; prescribing penalties; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to improve customer service by transferring the master license service program from the department of licensing to the department of revenue. It is the legislature's intent that all licenses obtained or renewed through the master license service as of March 1, 2011, will continue to be obtained or renewed through the master license service after the master license service program is transferred to the department of revenue effective July 1, 2011.

NEW SECTION. Sec. 2. (1) All powers, duties, and functions of the department of licensing pertaining to the administration of chapters 19.02, 19.80, and 59.30 RCW are transferred to the department of revenue. All references to the department of licensing or the director of licensing in the Revised Code of Washington must be construed to mean the department of revenue or the director of revenue when referring to the powers, duties, and functions transferred under this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material, including electronic records and files, in the possession of the department of licensing pertaining to the powers, functions, and duties transferred to the department of revenue under this section must be delivered to the custody of the department of revenue. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of licensing in carrying out the powers, functions, and duties transferred must be made available to the department of revenue. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred must be assigned to the department of revenue.

(b) Any appropriations made to the department of licensing for carrying out the powers, functions, and duties transferred must, on the effective date of this section, be transferred and credited to the department of revenue.

(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 must make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of licensing primarily engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of revenue. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of revenue 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 department of licensing pertaining to the powers, functions, and duties transferred must be continued and acted upon by the department of revenue. All existing contracts and obligations must remain in full force and must be performed by the department of revenue.

(5) The transfer of the powers, duties, functions, and personnel of the department of licensing does not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management must certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these must make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of licensing assigned to the department of revenue under this section whose positions are within an existing bargaining unit description at the department of revenue must become a part of the existing bargaining unit at the department of revenue and must be considered an appropriate inclusion or modification of the existing bargaining unit, if any, under the provisions of chapter 41.80 RCW.

NEW SECTION. Sec. 3. To ensure a seamless transfer of the master license service program from the department of licensing to the department of revenue and to prevent any disruption of service to persons seeking to use the master license system, the department of revenue is authorized to contract, under chapter 39.34 RCW, with the department of licensing for support in administering chapters 19.02, 19.80, and 59.30 RCW. Any contract entered into pursuant to this section must be for a duration no longer than necessary to fully and effectively transfer the master license service program from the department of licensing to the department of revenue.

Sec. 4. RCW 19.02.020 and 1993 c 142 s 3 are each amended to read as follows:

~~((As used in this chapter, the following words shall have the following meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "System" or "master license system" means the ~~((mechanism))~~ procedure by which master licenses are issued and renewed, license and regulatory information is collected and disseminated with due regard to privacy

statutes, and account data is exchanged by the agencies ~~((:))~~ and participating local governments.

(2) "Business license center" means the business registration and licensing center established by this chapter and located in and under the administrative control of the department of ~~((licensing:))~~ revenue.

(3) "Master application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter ~~((:))~~.

(4) "Master license" means the single document designed for public display issued by the business license center which certifies state agency or local government license approval and which incorporates the endorsements for individual licenses included in the master license system, which the state or local government requires for any person subject to this chapter ~~((:))~~.

(5) "License" means the whole or part of any agency or local government permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity ~~((:))~~.

(6) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities ~~((:))~~.

(7) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state or a participating local government to do business in the state or the participating local government and to obtain one or more licenses from the state or any of its agencies ~~((:))~~ or the participating local government.

(8) "Director" means the director of ~~((licensing:))~~ revenue.

(9) "Department" means the department of ~~((licensing:))~~ revenue.

(10) "Regulatory agency" means any state agency, board, commission, ~~((or))~~ division ~~((which))~~, or local government that regulates one or more professions, occupations, industries, businesses, or activities ~~((:))~~.

(11) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter ~~((:and))~~.

(12) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request.

(13) "Participating local government" means a municipal corporation or political subdivision that participates in the master license system established by this chapter.

Sec. 5. RCW 19.02.030 and 1999 c 240 s 5 are each amended to read as follows:

(1) There is ~~((created))~~ located within the department ~~((of licensing))~~ a business license center.

(2) The duties of the center ~~((shall))~~ include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal dates;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) The ~~((director of licensing))~~ department may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter.

Sec. 6. RCW 19.02.050 and 1997 c 391 s 11 are each amended to read as follows:

The legislature hereby directs the full participation by the following agencies in the implementation of this chapter:

(1) Department of agriculture;

(2) Secretary of state;

(3) Department of social and health services;

(4) Department of revenue;

(5) Department of fish and wildlife;

(6) ~~((Department of))~~ Employment security department;

(7) Department of labor and industries;

(8) Department of ~~((community, trade, and economic development))~~ commerce;

(9) Liquor control board;

(10) Department of health;

(11) Department of licensing;

(12) Parks and recreation commission;

(13) Utilities and transportation commission; and

(14) Other agencies as determined by the governor.

Sec. 7. RCW 19.02.070 and 1990 c 264 s 1 are each amended to read as follows:

(1) Any person requiring licenses which have been incorporated into the system ~~((shall))~~ must submit a master application to the department requesting the issuance of the licenses. The master application form ~~((shall))~~ must contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant ~~((shall))~~ must include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established by the department under the authority of RCW 19.02.075.

(3) Irrespective of any authority delegated to the department ~~((of licensing))~~ to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a precensing or renewal investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the license ~~((shall))~~ must remain with that agency. The business license center has the authority to issue those licenses for which proper fee payment and a completed application form have been received and for which no precensing or renewal approval action is required by the regulatory agency.

(4) Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of

this section, the department ~~((shall))~~ must immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency ~~((shall))~~ must advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the license; (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial; or (c) that the application is pending.

(5) The department ~~((shall))~~ must issue a master license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision regarding conditions imposed or licenses denied through the normal process established by statute or by the regulatory agency with the authority for approving issuance of the license.

(6) Regulatory agencies ~~((shall))~~ must be provided information from the master application for their licensing and regulatory functions.

Sec. 8. RCW 19.02.075 and 1995 c 403 s 1007 are each amended to read as follows:

~~((4))~~ The department ~~((shall))~~ must collect a handling fee ~~((of fifteen dollars))~~ on each master application ~~((The entire master application fee shall be deposited in the master license fund.~~

~~(2) The department shall collect a fee of nine dollars on))~~ and each renewal application filing. ~~((Renewal application fees shall))~~ The department must set the amount of the handling fees by rule, as authorized by RCW 19.02.030. The handling fees may not exceed nineteen dollars for each master application, and eleven dollars for each renewal application filing, and must be deposited in the master license fund. The department may increase handling and renewal fees for the purposes of making improvements in the master license service program, including improvements in technology and customer services, expanded access, and infrastructure.

Sec. 9. RCW 19.02.100 and 1997 c 58 s 865 are each amended to read as follows:

(1) The department ~~((shall))~~ may not issue or renew a master license to any person if:

(a) The person does not have a valid tax registration, if required by a regulatory agency;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title 23B RCW, chapter 18.100 RCW, Title 24 RCW, ~~((and))~~ or any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state if the person is required to be so registered; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding master license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section ~~((shall))~~ prevents registration by the state of a business for taxation purposes, or an employer for the purpose of paying an

employee of that employer industrial insurance or unemployment insurance benefits.

(3) The department (~~shall~~) must 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~~) is automatic upon the department'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. 10. RCW 19.02.800 and 2000 c 171 s 44 are each amended to read as follows:

Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under a master license system (~~shall~~) do not apply to those business or professional activities that are licensed or regulated under chapter 31.04, 31.12, (~~31.12A,~~) or 31.13 RCW or under Title 30, 32, 33, or 48 RCW.

Sec. 11. RCW 19.02.900 and 1977 ex.s. c 319 s 10 are each amended to read as follows:

If any provision of this (~~1977 amendatory act~~) chapter, or its application to any person or circumstance is held invalid, the remainder of the (~~act~~) chapter, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. A new section is added to chapter 19.02 RCW to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner licensing information;

(b) "Licensing information" means any information created or obtained by the department in the administration of this chapter and chapters 19.80 and 59.30 RCW, which information relates to any person who: (i) Has applied for or has been issued a license or trade name; or (ii) has been issued an assessment or delinquency fee. Licensing information includes master applications, renewal applications, and master licenses; and

(c) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency.

(2) Licensing information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose any licensing information. Nothing in this chapter requires any person possessing licensing information made confidential and privileged by this section to delete information from such information so as to permit its disclosure.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing licensing information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In which the person about whom such licensing information is sought and the department, another state agency, or a local government are adverse parties in the proceeding; or

(ii) Involving a dispute arising out of the department's administration of chapter 19.02, 19.80, or 59.30 RCW if the licensing information relates to a party in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such licensing information regarding a license applicant or license holder to such license applicant or license holder or to such person or persons as that license applicant or license holder may designate in a request for, or consent to, such disclosure, or to any other person, at the license applicant's or license holder's request, to the extent necessary to comply with a request for information or assistance made by the license applicant or license holder to such other person. However, licensing information not received from the license applicant or holder must 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 license applicant, license holder, 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 license applicant or license holder by the order of any court;

(c) Publishing statistics so classified as to prevent the identification of particular licensing information;

(d) Disclosing licensing 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, or licensing;

(e) Permitting the department's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any licensing 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 or license enforcement. A peace officer or county prosecuting attorney who receives the licensing information may disclose that licensing information only for use in the investigation and a related court proceeding, or in the court proceeding for which the licensing information originally was sought;

(g) Disclosing, in a manner that is not associated with other licensing information, the name of a license applicant or license holder, entity type, registered trade name, business address, mailing address, unified business identifier number, list of licenses issued to a person through the master license system established in chapter 19.02 RCW and their issuance and expiration dates, and the dates of opening of a business. The department is authorized to give, sell, or provide access to lists of licensing information under this subsection (3)(g) that will be used for commercial purposes;

(h) Disclosing licensing 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 42.56 RCW or is a

document maintained by a court of record and is not otherwise prohibited from disclosure;

(i) Disclosing any licensing information when the disclosure is specifically authorized under any other section of the Revised Code of Washington;

(j) Disclosing licensing information to the proper officer of the licensing or tax department of any city, town, or county of this state, for official purposes. If the licensing information does not relate to a license issued by the city, town, or county requesting the licensing information, disclosure may be made only if the laws of the requesting city, town, or county grants substantially similar privileges to the proper officers of this state; or

(k) Disclosing licensing information to the federal government for official purposes.

(4) The department may refuse to disclose licensing information that is otherwise disclosable under subsection (3) of this section if such disclosure would violate federal law or any information sharing agreement between the state and federal government.

(5) Any person acquiring knowledge of any licensing information in the course of his or her employment with the department and any person acquiring knowledge of any licensing information as provided under subsection (3)(d), (e), (f), (j), or (k) of this section, who discloses any such licensing information to another person not entitled to knowledge of such licensing 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 must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 13. RCW 19.80.005 and 2000 c 174 s 1 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter~~((:))~~ unless the context clearly requires otherwise.

(1) "Trade name" means a word or name, or any combination of a word or name, used by a person to identify the person's business which:

(a) Is not, or does not include, the true and real name of all persons conducting the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(2) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

(3) "Person" means any individual, partnership, limited liability company, or corporation conducting or having an interest in a business in the state.

(4) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

(c) The registered corporate name of a domestic corporation as filed with the secretary of state;

(d) The registered corporate name of a foreign corporation authorized to do business within the state of Washington as filed with the secretary of state;

(e) The registered partnership name of a domestic limited partnership as filed with the secretary of state;

(f) The registered partnership name of a foreign limited partnership as filed with the secretary of state; or

(g) The name of a general partnership which includes in its name the true and real names, as defined in (a) through (f) of this subsection, of each general partner as required in RCW 19.80.010.

(5) "Department" means the department of revenue.

Sec. 14. RCW 19.80.010 and 2000 c 174 s 2 are each amended to read as follows:

Each person or persons who ~~((shall carry))~~ carries on, conducts, or transacts business in this state under any trade name ~~((shall))~~ must register that trade name with the department ~~((of licensing as set forth))~~ as provided in this section~~((:))~~.

(1) Sole proprietorship or general partnership: The registration ~~((shall))~~ must set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration ~~((shall))~~ must set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic limited liability company: The registration ~~((shall))~~ must set forth the limited liability company name as filed with the office of the secretary of state.

(4) Foreign or domestic corporation: The registration ~~((shall))~~ must set forth the corporate name as filed with the office of the secretary of state.

Sec. 15. RCW 19.80.025 and 2000 c 174 s 3 are each amended to read as follows:

(1) A notice of change ~~((shall))~~ must be filed with the department ~~((of licensing))~~ when a change occurs in:

(a) The true and real name of a person conducting a business with a trade name registered under this chapter; or

(b) Any mailing address set forth on the registration or any subsequently filed notice of change.

(2) A notice of cancellation ~~((shall))~~ must be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new registration, ~~((shall))~~ must be filed before conducting or transacting any business when:

(a) An addition, deletion, or any change of person or persons conducting business under the registered trade name occurs; or

(b) There is a change in the wording or spelling of the trade name since initial registration or renewal.

Sec. 16. RCW 19.80.045 and 1984 c 130 s 6 are each amended to read as follows:

The ~~((director of licensing shall))~~ department must adopt rules as necessary to administer this chapter. The rules may include but are not limited to specifying forms and setting fees for trade name registrations, amendments,

searches, renewals, and copies of registration documents. Fees ~~((shall))~~ may not exceed the actual cost of administering this chapter.

Sec. 17. RCW 19.80.075 and 1992 c 107 s 6 are each amended to read as follows:

All fees collected by the department ~~((of licensing))~~ under this chapter ~~((shall))~~ must be deposited with the state treasurer and credited to the master license fund ~~((, except for trade name registration fees collected from June 1, 1992, to June 30, 1992, which shall be deposited in the general fund. Beginning July 1, 1992, trade name registration fees shall be deposited in the master license fund))~~.

Sec. 18. RCW 19.80.900 and 1984 c 130 s 11 are each amended to read as follows:

If any provision of this ~~((act))~~ chapter or its application to any person or circumstance is held invalid, the remainder of the ~~((act))~~ chapter or the application of the provision to other persons or circumstances is not affected.

Sec. 19. RCW 19.94.015 and 1995 c 355 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device ~~((shall))~~ must be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device ~~((shall))~~ must be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee ~~((shall))~~ may not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers ~~((shall))~~ must be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device ~~((shall))~~ must be paid to the department of ~~((licensing))~~ revenue concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device ~~((shall))~~ must be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. However, the use of an instrument or device that is in commercial use on the effective date of this act ~~((shall))~~ must be initially registered at the time the first renewal of the master license of the

owner of the instrument or device is due following the effective date of this act. The department of ~~((licensing shall))~~ revenue must remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section ~~((shall))~~ must notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted.

Sec. 20. RCW 34.05.310 and 2004 c 31 s 1 are each amended to read as follows:

(1)~~(a)~~ (a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies ~~((shall))~~ must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency ~~((shall))~~ must prepare a statement of inquiry that:

~~((a))~~ (i) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

~~((b))~~ (ii) Discusses why rules on this subject may be needed and what they might accomplish;

~~((c))~~ (iii) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

~~((d))~~ (iv) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

~~((e))~~ (v) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

(b) The statement of inquiry ~~((shall))~~ must be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, ~~((shall))~~ must be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) This section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

Sec. 21. RCW 34.05.328 and 2010 c 112 s 15 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency (~~shall~~) must:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice (~~shall~~) must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis (~~shall~~) must be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it

that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency (~~shall~~) must place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency (~~shall~~) must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan (~~shall~~) must describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency (~~shall~~) must do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency (~~shall~~) must report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification

or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency ~~((shall))~~ must state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, ~~((shall))~~ must report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report ~~((shall))~~ must document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

Sec. 22. RCW 35.21.392 and 2009 c 432 s 2 are each amended to read as follows:

A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of ~~((licensing shall))~~ revenue must conduct the verification for cities that participate in the master license system.

Sec. 23. RCW 35A.21.340 and 2009 c 432 s 3 are each amended to read as follows:

A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of ~~((licensing shall))~~ revenue must conduct the verification for cities that participate in the master license system.

Sec. 24. RCW 43.07.200 and 1982 c 182 s 12 are each amended to read as follows:

~~((Not later than July 1, 1982, the secretary of state and the director of licensing shall propose to the director of financial management a contract and working agreement with accompanying fiscal notes designating the business license center as the secretary of state's agent for issuing all or a portion of the corporation renewals within the jurisdiction of the secretary of state. The secretary of state and the director of licensing shall submit the proposed contract and accompanying fiscal notes to the legislature before October 1, 1982.~~

~~The secretary of state and the director of licensing shall jointly submit to the legislature by January 10, 1983, a schedule for designating the center as the secretary of state's agent for all such corporate renewals not governed by the contract.)~~ The secretary of state and the director of revenue may enter into agreements designating the department of revenue as the secretary of state's agent for issuing all or a portion of the legal entity renewals within the jurisdiction of the secretary of state.

Sec. 25. RCW 43.24.150 and 2009 c 429 s 4, 2009 c 412 s 21, and 2009 c 370 s 19 are each reenacted and amended to read as follows:

(1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares;
- (n) Chapter 67.08 RCW, boxing, martial arts, and wrestling; ~~((and))~~
- (o) Chapter 18.300 RCW, body art, body piercing, and tattooing;
- (p) Chapter 79A.60 RCW, whitewater river outfitters; and
- (q) Chapter 19.158 RCW, commercial telephone solicitation.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account ~~((shall))~~ must be accumulated and ~~((shall))~~ may not revert to the general fund at the end of the biennium.

(2) The director ~~((shall))~~ must biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which ~~((shall))~~ must include the estimated income from these business and professions fees.

Sec. 26. RCW 46.68.060 and 2009 c 470 s 711 are each amended to read as follows:

There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which ~~((shall))~~ must be deposited all moneys directed by law to be deposited therein. This fund ~~((shall))~~ must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the

2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the highway safety fund to the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund.

Sec. 27. RCW 46.72.110 and 2010 c 8 s 9091 are each amended to read as follows:

All fees received by the director under the provisions of this chapter ~~((shall))~~ must be transmitted by him or her, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the highway safety fund. Appropriations from the highway safety fund will support expenses incurred in carrying out the licensing and regulatory activities of this chapter.

Sec. 28. RCW 46.72A.110 and 1996 c 87 s 14 are each amended to read as follows:

The department ~~((shall))~~ must transmit all license and vehicle certificate fees received under this chapter, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the ~~((master license))~~ highway safety fund. Appropriations from the highway safety fund will support expenses incurred in carrying out the licensing and regulatory activities of this chapter.

Sec. 29. RCW 59.30.010 and 2007 c 431 s 1 are each amended to read as follows:

(1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced, a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

(b) The legislature intends to authorize the department of ~~((licensing))~~ revenue to register manufactured/mobile home communities and collect a registration fee.

(c) The legislature intends to authorize the attorney general to:

(i) Produce and distribute educational materials regarding the manufactured/mobile home landlord-tenant act and the manufactured/mobile home dispute resolution program created in RCW 59.30.030;

(ii) Administer the dispute resolution program by taking complaints, conducting investigations, making determinations, issuing fines and other penalties, and participating in administrative dispute resolutions, when necessary, when there are alleged violations of the manufactured/mobile home landlord-tenant act; and

(iii) Collect and annually report upon data related to disputes and violations, and make recommendations on modifying chapter 59.20 RCW, to the appropriate committees of the legislature.

Sec. 30. RCW 59.30.020 and 2007 c 431 s 2 are each amended to read as follows:

~~(For purposes of this chapter:)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Complainant" means a landlord, community owner, or tenant, who has a complaint alleging a violation of chapter 59.20 RCW~~((:))~~.

(2) "Department" means the department of ~~((licensing:))~~ revenue.

(3) "Director" means the director of ~~((licensing:))~~ revenue.

(4) "Landlord" or "community owner" means the owner of a mobile home park or a manufactured housing community and includes the agents of a landlord~~((:))~~.

(5) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater~~((:))~~.

(6) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development 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 the introduction of the United States department of housing and urban development manufactured home construction and safety act~~((:))~~.

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home~~((:))~~.

(8) "Manufactured/mobile home lot" means a portion of a manufactured/mobile home community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model~~((:))~~.

(9) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, park models, or recreational vehicles for the primary purpose of production of income, except where the real property is rented or held

out for rent for seasonal recreational purposes only and is not used for year-round occupancy((;)).

(10) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to the real property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the real property((;)).

(11) "Park model" means a recreational vehicle intended for permanent or semipermanent installation and is used as a permanent residence((;)).

(12) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily used as a permanent residence located in a mobile home park or manufactured housing community((;)).

(13) "Respondent" means a landlord, community owner, or tenant, alleged to have committed ((~~to~~)) a violation of chapter 59.20 RCW((;)).

(14) "Tenant" means any person, except a transient as defined in RCW 59.20.030, who rents a mobile home lot.

Sec. 31. RCW 59.30.050 and 2007 c 431 s 6 are each amended to read as follows:

(1) The department ((~~shall~~)) must annually register all manufactured/mobile home communities. Each community must be registered separately. The department must deliver by certified mail registration notifications to all known manufactured/mobile home community landlords. Registration information packets must include:

(a) Registration forms; and

(b) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to tenants.

(2) To apply for registration, the landlord of a manufactured/mobile home community must file with the department an application for registration on a form provided by the department and must pay a registration fee as described in subsection (3) of this section. The department may require the submission of information necessary to assist in identifying and locating a manufactured/mobile home community and other information that may be useful to the state, which must include, at a minimum:

(a) The names and addresses of the owners of the manufactured/mobile home community;

(b) The name and address of the manufactured/mobile home community;

(c) The name and address of the landlord and manager of the manufactured/mobile home community;

(d) The number of lots within the manufactured/mobile home community that are subject to chapter 59.20 RCW; and

(e) The addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW.

(3) Each manufactured/mobile home community landlord ((~~shall~~)) must pay to the department:

(a) A one-time master application fee for the first year of registration and, in subsequent years, an annual master renewal application fee, as provided in RCW 19.02.075; and

(b) An annual registration assessment of ten dollars for each manufactured/mobile home that is subject to chapter 59.20 RCW within a manufactured/

mobile home community. Manufactured/mobile home community landlords may charge a maximum of five dollars of this assessment to tenants. Nine dollars of the registration assessment for each manufactured/mobile home ~~((shall))~~ must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070 to fund the costs associated with the manufactured/mobile home dispute resolution program. The remaining one dollar ~~((shall))~~ must be deposited into the master license fund created in RCW 19.02.210. The annual registration assessment must be reviewed once each biennium by the department and the attorney general and may be adjusted to reasonably relate to the cost of administering this chapter. The registration assessment may not exceed ten dollars, but if the assessment is reduced, the portion allocated to the manufactured/mobile home dispute resolution program account and the master license fund ~~((shall))~~ must be adjusted proportionately.

(4) Initial registrations of ~~((mobile/manufactured housing))~~ manufactured/mobile home communities must be filed ~~((with the department))~~ before November 1, 2007, or within three months of the availability of mobile home lots for rent within the community. The manufactured/mobile home community is subject to a delinquency fee of two hundred fifty dollars for late initial registrations. The delinquency fee ~~((shall))~~ must be deposited in the master license fund. Renewal registrations that are not renewed by the expiration date as assigned by the department are subject to delinquency fees under RCW 19.02.085.

(5) Thirty days after sending late fee notices to a noncomplying landlord, the department may ~~((refer the past due account to a collection agency. If there is no response from a noncomplying landlord after sixty days in collections, the department may file an action to enforce payment of unpaid registration assessments and late fees in the superior court for Thurston county or in the county in which the manufactured/mobile home community is located. If the department prevails, the manufactured/mobile home community landlord shall pay the department's costs, including reasonable attorneys' fees, for the enforcement proceedings))~~ issue a warrant under section 33 of this act for the unpaid registration assessment and delinquency fee. If a warrant is issued by the department under section 33 of this act, the department must add a penalty of ten percent of the amount of the unpaid registration assessment and delinquency fee, but not less than ten dollars. The warrant penalty must be deposited into the master license fund created in RCW 19.02.210. Chapter 82.32 RCW applies to the collection of warrants issued under section 33 of this act.

(6) Registration is effective on the date determined by the department, and the department ~~((shall))~~ must issue a registration number to each registered manufactured/mobile home community. The department must provide an expiration date, assigned by the department, to each manufactured/mobile home community who registers.

Sec. 32. RCW 59.30.060 and 2007 c 431 s 7 are each amended to read as follows:

The department must have the capability to compile, update, and maintain the most accurate database possible of all the manufactured/mobile home communities in the state, which must include all of the information collected under RCW 59.30.050, except for the addresses of each manufactured/mobile

home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW, which must be made available to the attorney general and the department of ~~((community, trade, and economic development))~~ commerce in a format to be determined by a collaborative agreement between the department ~~((of licensing))~~ and the attorney general.

NEW SECTION. Sec. 33. A new section is added to chapter 59.30 RCW to read as follows:

(1) If any registration assessment or delinquency fee is not paid in full within thirty days after sending late fee notices to a noncomplying landlord, the department may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment.

(2) Interest must be computed on a daily basis on the amount of outstanding registration assessment and delinquency fee imposed under RCW 59.30.050 at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. Interest must be deposited in the master license fund created in RCW 19.02.210.

(3) The department may file a copy of the warrant with the clerk of the superior court of any county of the state in which real or personal property of the owner of the manufactured/mobile home community may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk must enter in the judgment docket the name of the owner of the manufactured/mobile home community mentioned in the warrant and the amount of the registration assessment and delinquency fee, or portion thereof, and any increases and penalties for which the warrant is issued, and the date when the copy is filed.

(4) The amount of the warrant so docketed becomes a lien upon the title to, and interest in, all real and personal property of the owner of the manufactured/mobile home community 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 garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

(5) The lien is not superior to bona fide interests of third persons that had vested prior to the filing of the warrant. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the owner of the manufactured/mobile home community mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

Sec. 34. RCW 76.48.121 and 2009 c 245 s 13 are each amended to read as follows:

Every first or secondary specialized forest products buyer purchasing specialty wood and every specialty wood processor ~~((shall))~~ must prominently display ~~((@))~~ the master license issued ~~((by the department of licensing))~~ under RCW 19.02.070 and endorsed with the respective licenses or registrations or a copy of the master license at each location where the buyer or processor receives specialty wood if the first or secondary specialized forest products buyer or

specialty wood processor is required to possess a license incorporated into the master license system created in chapter 19.02 RCW.

Sec. 35. RCW 79A.60.485 and 2000 c 11 s 110 are each amended to read as follows:

The department of licensing may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to implement RCW 79A.60.480. The fees must approximate the cost of administration. The fees must be deposited in the (~~master license account~~) business and professions account created in RCW 43.24.150.

Sec. 36. RCW 82.01.060 and 1995 c 403 s 106 are each amended to read as follows:

The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, (~~shall~~) must:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature(~~(-PROVIDED, That))~~. However, the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, (~~shall~~) remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner;

(7) Provide the opportunity for any person feeling aggrieved by any action taken against the person by the department in the administration of chapters 19.02, 19.80, and 59.30 RCW to request a review of the department's action. Such review may be conducted as a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494.

Sec. 37. RCW 82.02.010 and 1979 c 107 s 9 are each amended to read as follows:

For the purpose of this title, unless ~~((otherwise required by the context))~~ the context clearly requires otherwise:

(1) "Department" means the department of revenue of the state of Washington;

(2) ~~((The word))~~ "Director" means the director of the department of revenue of the state of Washington;

(3) ~~((The word))~~ "Taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title. "Taxpayer" also includes any person liable for any fee or other charge collected by the department under any provision of law, including registration assessments and delinquency fees imposed under RCW 59.30.050; and

(4) Words in the singular number ~~((shall))~~ include the plural and the plural ~~((shall))~~ include the singular. Words in one gender ~~((shall))~~ include all other genders.

Sec. 38. RCW 82.32.030 and 2007 c 6 s 202 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she ~~((shall))~~ must, under such rules as the department ~~((of revenue shall))~~ prescribes, apply for and obtain from the department a registration certificate. Such registration certificate ~~((shall be))~~ is personal and nontransferable and ~~((shall be))~~ is valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public ~~((shall be))~~ is required. Each certificate ~~((shall))~~ must be numbered and ~~((shall))~~ must show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and ~~((shall))~~ must be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section ~~((shall))~~ may engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW.

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by the department under the authority of RCW 19.02.075.

Sec. 39. RCW 90.76.010 and 2007 c 147 s 2 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~((1))~~ (a) "Department" means the department of ecology.

~~((2))~~ (b) "Director" means the director of the department.

~~((3))~~ (c) "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))~~ (d) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

~~((5))~~ (e) "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.

~~((6))~~ (f) "License" means the master business license underground storage tank endorsement issued by the department of ~~((licensing))~~ revenue.

~~((7))~~ (g) "Underground storage tank compliance act of 2005" means Title XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec. 15801 et seq.) which have amended the federal resource conservation and recovery act's subtitle I.

~~((8))~~ (h) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(2) 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. 40. RCW 90.76.020 and 2007 c 147 s 3 are each amended to read as follows:

(1) The department ~~((shall))~~ must 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 the underground storage tank compliance act of 2005 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;
- (g) Financial responsibility for underground storage tanks containing regulated substances; and

(h) Groundwater protection measures, including secondary containment and monitoring for installation or replacement of all underground storage tank systems or components, such as tanks and piping, installed after July 1, 2007, and under dispenser spill containment for installation or replacement of all dispenser systems installed after July 1, 2007.

(2) The department (~~shall~~) must 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 statewide standards in these designated areas.

(3) The department (~~shall~~) must 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;

(d) Information sharing;

(e) Owner and operator training; and

(f) Delivery prohibition for underground storage tank systems or facilities that are determined by the department to be ineligible to receive regulated substances.

(4) The department (~~shall~~) must establish a program that provides for the annual licensing of underground storage tanks. The license (~~shall~~) must take the form of a tank endorsement on the facility's annual master business license issued by the department of (~~licensing~~) revenue. 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, or any rules adopted under this chapter. The master business license (~~shall~~) must be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department (~~shall~~) must issue a one-time "facility compliance tag" to underground storage tank facilities that have installed the equipment required to meet corrosion protection, spill prevention, overfill prevention, leak detection standards, have demonstrated financial responsibility, and have paid annual tank fees. The facility (~~shall~~) must continue to maintain compliance with corrosion protection, spill prevention, overfill prevention(~~(f,))~~, and leak detection standards, financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag (~~shall~~) must be displayed on or near 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 of this chapter, or any rules adopted under this chapter.

(6) The department may place a red tag on a tank at a facility if the department determines that the owner or operator is not in compliance with this chapter or the rules adopted under this chapter regarding the compliance requirements related to that tank. Removal of a red tag without authorization from the department is a violation of this chapter.

(7) The department may establish programs to certify persons who install or decommission underground storage tank systems or conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, site assessments, or other activities required under this chapter. Certification programs ~~((shall))~~ must be designed to ensure that each certification will be effective in all jurisdictions of the state.

(8) When adopting rules under this chapter, the department ~~((shall))~~ must consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW.

NEW SECTION. Sec. 41. RCW 19.02.901 and 19.02.910 are each decodified.

NEW SECTION. Sec. 42. 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. 43. 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 July 1, 2011.

Passed by the House April 7, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 299

[Engrossed Senate Bill 5005]

K-12—IMMUNIZATION—EXEMPTION

AN ACT Relating to exemption from immunization; and amending RCW 28A.210.090.

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

Sec. 1. RCW 28A.210.090 and 1991 c 3 s 290 are each amended to read as follows:

(1) Any child shall be exempt in whole or in part from the immunization measures required by RCW 28A.210.060 through 28A.210.170 upon the presentation of any one or more of the ~~((following))~~ certifications required by this section, on a form prescribed by the department of health:

~~((+))~~ (a) A written certification signed by ~~((any physician licensed to practice medicine pursuant to chapter 18.71 or 18.57 RCW))~~ a health care practitioner that a particular vaccine required by rule of the state board of health

is, in his or her judgment, not advisable for the child: PROVIDED, That when it is determined that this particular vaccine is no longer contraindicated, the child will be required to have the vaccine;

~~((2))~~ (b) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the religious beliefs of the signator are contrary to the required immunization measures; ~~(and)~~ or

~~((3))~~ (c) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the signator has either a philosophical or personal objection to the immunization of the child.

(2)(a) The form presented on or after the effective date of this section must include a statement to be signed by a health care practitioner stating that he or she provided the signator with information about the benefits and risks of immunization to the child. The form may be signed by a health care practitioner at any time prior to the enrollment of the child in a school or licensed day care. Photocopies of the signed form or a letter from the health care practitioner referencing the child's name shall be accepted in lieu of the original form.

(b) A health care practitioner who, in good faith, signs the statement provided for in (a) of this subsection is immune from civil liability for providing the signature.

(c) Any parent or legal guardian of the child or any adult in loco parentis to the child who exempts the child due to religious beliefs pursuant to subsection (1)(b) of this section is not required to have the form provided for in (a) of this subsection signed by a health care practitioner if the parent or legal guardian demonstrates membership in a religious body or a church in which the religious beliefs or teachings of the church preclude a health care practitioner from providing medical treatment to the child.

(3) For purposes of this section, "health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

Passed by the Senate April 21, 2011.

Passed by the House March 25, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 300

[Substitute Senate Bill 5025]

PUBLIC RECORDS REQUESTS—CRIMINAL OFFENDERS—PENALTIES

AN ACT Relating to making requests by or on behalf of an inmate under the public records act ineligible for penalties; amending RCW 42.56.565; and creating a new section.

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

Sec. 1. RCW 42.56.565 and 2009 c 10 s 1 are each amended to read as follows:

(1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless

the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

~~((2))~~ (3) In deciding whether to enjoin a request under subsection ~~((4))~~ (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

~~((3))~~ (4) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

~~((4))~~ (5) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

NEW SECTION. Sec. 2. This act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of the effective date of this section.

Passed by the Senate April 15, 2011.
Passed by the House April 6, 2011.
Approved by the Governor May 10, 2011.
Filed in Office of Secretary of State May 11, 2011.

CHAPTER 301

[Substitute Senate Bill 5067]

LABOR AND INDUSTRIES—EMPLOYMENT SECURITY—MAILING REQUIREMENTS

AN ACT Relating to changing the certified and registered mail requirements of the department of labor and industries and employment security department; and amending RCW 18.27.060, 18.27.230, 18.27.370, 18.106.100, 18.106.180, 19.28.131, 19.28.271, 19.28.341, 19.28.490, 43.22.435, 43.22A.080, 43.22A.130, 49.17.140, 49.26.110, 49.40.060, 49.48.083, 50.20.190, 50.24.070, 50.24.110, 50.24.115, 70.79.320, 70.87.125, 70.87.185, and 70.87.205.

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

Sec. 1. RCW 18.27.060 and 2006 c 185 s 14 are each amended to read as follows:

(1) A certificate of registration shall be valid for two years and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant.

(3) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall mail notice of the suspension to the contractor's address on the certificate of registration (~~by certified and by first class mail~~) within two days after suspension using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) Renewal of registration is valid on the date the department receives the required fee and proof of bond and liability insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of renewed registration until he or she receives verification from the department.

(5) The department shall immediately suspend the certificate of registration of a contractor who has been certified by the department of social and health services as a person who is not in compliance with a support order or a visitation order as provided in RCW 74.20A.320. The certificate of registration shall not be reissued or renewed unless the person provides to the department a release from the department of social and health services stating that he or she is in compliance with the order and the person has continued to meet all other requirements for certification during the suspension.

(6) For a contractor who employs plumbers, as described in RCW 18.106.010(10)(c), and is also required to be licensed as an electrical contractor as required in RCW 19.28.041, while doing pump and irrigation or domestic pump work described in rule as authorized by RCW 19.28.251, the department shall establish a single registration/licensing document for those who qualify for

both general contractor registration as defined by this chapter and an electrical contractor license as defined by chapter 19.28 RCW.

Sec. 2. RCW 18.27.230 and 2007 c 436 s 12 are each amended to read as follows:

The department may issue a notice of infraction if the department reasonably believes that the contractor has committed an infraction under this chapter. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by the department's compliance inspectors or service can be made ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed directed to the contractor named in the notice of infraction at the contractor's last known address of record. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall send a copy of the notice ~~((by mail, return receipt requested.))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the contractor if the department is able to obtain the contractor's address.

Sec. 3. RCW 18.27.370 and 2001 c 159 s 6 are each amended to read as follows:

(1) If an unregistered contractor defaults in a payment, penalty, or fine due to the department, the director or the director's designee may issue a notice of assessment certifying the amount due. The notice must be served upon the unregistered contractor by mailing the notice to the unregistered contractor by certified mail to the unregistered contractor's last known address or served in the manner prescribed for the service of a summons in a civil action.

(2) A notice of assessment becomes final thirty days from the date the notice was served upon the unregistered contractor unless a written request for reconsideration is filed with the department or an appeal is filed in a court of competent jurisdiction in the manner specified in RCW 34.05.510 through 34.05.598. The request for reconsideration must set forth with particularity the reason for the unregistered contractor's request. The department, within thirty days after receiving a written request for reconsideration, may modify or reverse a notice of assessment, or may hold a notice of assessment in abeyance pending further investigation. If a final decision of a court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision of the court, is final.

(3) The director or the director's designee may file with the clerk of any county within the state, a warrant in the amount of the notice of assessment, plus interest, penalties, and a filing fee of twenty 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 unregistered contractor mentioned in the warrant, the amount of payment, penalty, fine due on it, or filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed shall become a lien upon the title to, and interest in, all real and personal property of the unregistered

contractor against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the unregistered contractor within three days of filing with the clerk.

(4) The director or the director's designee may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an unregistered contractor upon whom a notice of assessment has been served by the department for payments, penalties, or fines due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, ~~((by certified mail, return receipt requested))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, or by an authorized representative of the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director or the director's authorized representative. The director shall hold the property in trust for application on the unregistered contractor's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an unregistered contractor and the property subject to it is wages, the unregistered contractor may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(5) In addition to the procedure for collection of a payment, penalty, or fine due to the department as set forth in this section, the department may recover civil penalties imposed under this chapter in a civil action in the name of the department brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

Sec. 4. RCW 18.106.100 and 1996 c 147 s 3 are each amended to read as follows:

(1) The department may revoke or suspend a certificate of competency for any of the following reasons:

- (a) The certificate was obtained through error or fraud;
- (b) The certificate holder is judged to be incompetent to carry on the trade of plumbing as a journeyman plumber or specialty plumber;
- (c) The certificate holder has violated any provision of this chapter or any rule adopted under this chapter.

(2) Before a certificate of competency is revoked or suspended, the department shall send written notice (~~(by registered mail with return receipt requested)~~) using a method by which the mailing can be tracked or the delivery can be confirmed to the certificate holder's last known address. The notice must list the allegations against the certificate holder and give him or her the opportunity to request a hearing before the advisory board. At the hearing, the department and the certificate holder have opportunity to produce witnesses and give testimony. The hearing must be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented and shall notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

(3) The department may deny renewal of a certificate of competency issued under this chapter if the applicant owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial (~~(by registered mail, return receipt requested,)~~) using a method by which the mailing can be tracked or the delivery can be confirmed to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the hearings officer. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. If the hearings officer sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing.

Sec. 5. RCW 18.106.180 and 2002 c 82 s 3 are each amended to read as follows:

(1) An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020 if:

(a) A person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of:

(i) Having a certificate or permit issued by the department in accordance with this chapter, or being supervised by a person who has such a certificate or permit; and

(ii) Being registered as a contractor as required under chapter 18.27 RCW or this chapter, or being employed by a person who is registered as a contractor;

(b) A person who employs anyone, or offers or advertises to employ anyone, to do plumbing work fails to produce evidence of being registered as a contractor as required under chapter 18.27 RCW or this chapter; or

(c) A contractor violates RCW 18.106.320.

(2) A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address provided to the department of the person named in the notice.

Sec. 6. RCW 19.28.131 and 2006 c 185 s 13 are each amended to read as follows:

Until July 1, 2007, the department shall issue a written warning to any specialty contractor, performing the scope of work defined by rule for the pump and irrigation or domestic pump specialties, not having a valid electrical contractor license. The warning will state that the contractor must be qualified for and apply for a specialty electrical contractor license under the requirements in RCW 19.28.041 within thirty calendar days of the warning. Only one warning will be issued to any contractor. If the contractor fails to comply with this section, the department shall issue a penalty or penalties as authorized in this section to the contractor. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 of the amount of the penalty and of the specific violation ~~((by certified mail, return receipt requested;))~~ using a method by which the mailing can be tracked or the delivery can be confirmed sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party ~~((by certified mail, return receipt requested))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

Sec. 7. RCW 19.28.271 and 2009 c 36 s 6 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271, and photo identification. The department may establish by rule a requirement that the individual also wear and visibly display his or her certificate or permit.

(2) Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party (~~by certified mail, return receipt requested~~) using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.161 through 19.28.271 is a separate violation.

(3) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW 19.28.161 through 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271 are violated.

Sec. 8. RCW 19.28.341 and 2000 c 238 s 4 are each amended to read as follows:

(1) The department has the power, in case of serious noncompliance with the provisions of this chapter, to revoke or suspend for such a period as it determines, any electrical or telecommunications contractor license or electrical or telecommunications contractor administrator certificate issued under this chapter. The department shall notify the holder of the license or certificate of the revocation or suspension (~~by certified mail~~) using a method by which the mailing can be tracked or the delivery can be confirmed. A revocation or suspension is effective twenty days after the holder receives the notice. Any revocation or suspension is subject to review by an appeal to the board. The filing of an appeal stays the effect of a revocation or suspension until the board makes its decision. The appeal shall be filed within twenty days after notice of the revocation or suspension is given (~~by certified mail~~) using a method by which the mailing can be tracked or the delivery can be confirmed sent to the address of the holder of the license or certificate as shown on the application for the license or certificate, and shall be effected by filing a written notice of appeal

with the department, accompanied by a certified check for two hundred dollars, which shall be returned to the holder of the license or certificate if the decision of the department is not sustained by the board. The hearing shall be conducted in accordance with chapter 34.05 RCW. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund.

(2) The department 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. 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 department'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. 9. RCW 19.28.490 and 2000 c 238 s 213 are each amended to read as follows:

Any person, firm, partnership, corporation, or other entity violating any of the provisions of this chapter may be assessed a penalty of not less than one hundred dollars or more than ten thousand dollars per violation. The department, after consulting with the board and receiving the board's recommendations, shall set by rule a schedule of penalties for violating this chapter. The department shall notify the person, firm, partnership, corporation, or other entity violating any of these provisions of the amount of the penalty and of the specific violation. The notice shall be sent ~~((by certified mail, return receipt requested,))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the assessed party. Penalties are subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party, and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, that shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

Sec. 10. RCW 43.22.435 and 2002 c 268 s 4 are each amended to read as follows:

(1)(a) In addition to or in lieu of any other penalty applicable under this chapter, and except as provided in (b) of this subsection, the department may

assess a civil penalty of not more than one thousand dollars against a contractor, firm, partnership, or corporation, that fails to obtain a permit before altering a mobile or manufactured home as required under this chapter or rules adopted under this chapter. Each day on which a violation occurs constitutes a separate violation. However, the cumulative penalty for the same occurrence may not exceed five thousand dollars.

(b) The department must adopt a schedule of civil penalties giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation and the history of previous violations. Penalties for subsequent violations, not constituting the same occurrence, committed within two years of a prior violation by the same party or entity, or by an individual who was a principal or officer of the same entity, must be double the amount of the penalty for the prior violation or one thousand dollars, whichever is greater.

(2)(a) The department may issue a notice of correction before issuing a civil penalty assessment. The notice must include:

(i) A description of the violation;

(ii) A statement of what is required to correct the violation;

(iii) The date by which the department requires correction to be achieved; and

(iv) Notice of the individual or department office that must be contacted to obtain a permit or other compliance information.

(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(c) If the department issues a notice of correction, it shall not issue a civil penalty for the violation identified in the notice of correction unless the responsible person fails to comply with the notice.

(3)(a) The department must issue written notices of civil penalties imposed under this section, with the reasons for the penalty, ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the party named in the notice.

(b) If a party desires to contest a notice of civil penalty issued under this section, the party must file a notice of appeal with the department within twenty days of the department's mailing of the notice of civil penalty. An administrative law judge of the office of administrative hearings will hear and determine the appeal. Appeal proceedings must be conducted pursuant to chapter 34.05 RCW. An appeal of the administrative law judge's determination or order shall be to the superior court. The superior court's decision is subject only to discretionary review under the rules of appellate procedure.

Sec. 11. RCW 43.22A.080 and 1994 c 284 s 21 are each amended to read as follows:

(1) The department may revoke a certificate of manufactured home installation upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder of the certificate is judged to be incompetent as a result of multiple infractions of the state installation code, WAC 296-150B-200 through 296-150B-255; or

(c) The holder has violated a provision of this chapter or a rule adopted to implement this chapter.

(2) Before a certificate of manufactured home installation is revoked, the holder must be given written notice of the department's intention to revoke the certificate, sent ~~((by registered mail, return receipt requested,))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.05 RCW.

Sec. 12. RCW 43.22A.130 and 1994 c 284 s 25 are each amended to read as follows:

An authorized representative of the department may issue a notice of infraction if the person supervising the manufactured home installation work fails to produce evidence of having a certificate issued by the department in accordance with this chapter. A notice of infraction issued under this chapter shall be personally served on or sent ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the person named in the notice by the authorized representative.

Sec. 13. RCW 49.17.140 and 1994 c 61 s 1 are each amended to read as follows:

(1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer ~~((by certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the

notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

Sec. 14. RCW 49.26.110 and 1995 c 218 s 4 are each amended to read as follows:

(1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed ~~((by registered mail, return receipt requested,))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department.

Sec. 15. RCW 49.40.060 and 2010 c 8 s 12035 are each amended to read as follows:

The director of labor and industries, or his or her deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee ~~((by registered mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed directed to their last known post office address.

Sec. 16. RCW 49.48.083 and 2010 c 42 s 2 are each amended to read as follows:

(1) If an employee files a wage complaint with the department, the department shall investigate the wage complaint. Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance no later than sixty days after the date on which the department received the wage complaint. The department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period and specifying the duration of the extension. The department may not investigate any alleged violation of a wage payment requirement that occurred more than three years before the date that the employee filed the wage complaint. The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or ~~((certified mail))~~ using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee. The wages and interest owed must be calculated from the first date wages were owed to the employee, except that the department may not order the employer to pay any wages and interest that were owed more than three years before the date the wage complaint was filed with the department.

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

(b) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any wage payment requirement; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or (iii) an interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.

(c) The department shall waive any civil penalty assessed against an employer under this section if the employer is not a repeat willful violator, and the director determines that the employer has provided payment to the employee of all wages that the department determined that the employer owed to the employee, including interest, within ten business days of the employer's receipt of the citation and notice of assessment from the department.

(d) The department may waive or reduce at any time a civil penalty assessed under this section if the director determines that the employer paid all wages and interest owed to an employee.

(e) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Upon payment by an employer, and acceptance by an employee, of all wages and interest assessed by the department in a citation and notice of assessment issued to the employer, the fact of such payment by the employer, and of such acceptance by the employee, shall: (a) Constitute a full and complete satisfaction by the employer of all specific wage payment requirements addressed in the citation and notice of assessment; and (b) bar the employee from initiating or pursuing any court action or other judicial or administrative proceeding based on the specific wage payment requirements addressed in the citation and notice of assessment. The citation and notice of assessment shall include a notification and summary of the specific requirements of this subsection.

(5) The applicable statute of limitations for civil actions is tolled during the department's investigation of an employee's wage complaint against an employer. For the purposes of this subsection, the department's investigation begins on the date the employee files the wage complaint with the department and ends when: (a) The wage complaint is finally determined through a final and binding citation and notice of assessment or determination of compliance; or (b) the department notifies the employer and the employee in writing that the wage complaint has been otherwise resolved or that the employee has elected to terminate the department's administrative action under RCW 49.48.085.

Sec. 17. RCW 50.20.190 and 2007 c 327 s 1 are each amended to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice (~~((by certified mail return receipt requested to the individual's last known address of the intended action))~~), using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where 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 person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A 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 for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant (~~(by certified mail to the person's last known address within five days of its filing with the clerk)~~) using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities.

Sec. 18. RCW 50.24.070 and 1987 c 111 s 4 are each amended to read as follows:

At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or ~~((by certified mail to the last known address of the employer as shown by the records of the department))~~ using a method by which the mailing can be tracked or the delivery can be confirmed. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon.

Sec. 19. RCW 50.24.110 and 1990 c 245 s 6 are each amended to read as follows:

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, ~~((by certified mail, return receipt requested))~~ using a method by which the mailing can be tracked or the delivery can be confirmed, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized

representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs.

Sec. 20. RCW 50.24.115 and 2010 c 8 s 13032 are each amended to read as follows:

Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). 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 employer mentioned in the warrant, the amount of the tax, interest, penalties, 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 the employer 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 under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit ~~((by certified mail to his or her last known address))~~ using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk.

Sec. 21. RCW 70.79.320 and 2005 c 22 s 6 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice ~~((by certified mail))~~

using a method by which the mailing can be tracked or the delivery can be confirmed to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty.

Sec. 22. RCW 70.87.125 and 2003 c 143 s 16 are each amended to read as follows:

(1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

- (a) Any false statement as to a material matter in the application;
- (b) Fraud, misrepresentation, or bribery in securing a license;
- (c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;
- (d) A violation of any provisions of this chapter; and
- (e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

- (a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;
- (b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or
- (c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice (~~by certified mail~~) using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter.

Sec. 23. RCW 70.87.185 and 1983 c 123 s 18 are each amended to read as follows:

(1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice (~~by certified mail~~) using a method by which the mailing can be tracked or the delivery can be confirmed to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty.

Sec. 24. RCW 70.87.205 and 2005 c 433 s 49 are each amended to read as follows:

(1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent (~~by certified mail~~) using a method by which the mailing can be tracked or the delivery can be confirmed.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators.

Passed by the Senate April 18, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 302

[Substitute Senate Bill 5187]

MENTAL HEALTH TREATMENT—MINORS—PARENTAL NOTIFICATION

AN ACT Relating to the accountability of mental health professionals employed by an evaluation and treatment facility for communicating with a parent or guardian about the option of parent-initiated mental health treatment; amending RCW 71.34.375, 70.41.130, and 71.12.590; and adding new sections to chapter 71.34 RCW.

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

Sec. 1. RCW 71.34.375 and 2003 c 107 s 1 are each amended to read as follows:

(1) ~~(The)~~ If a parent or guardian, for the purpose of mental health treatment or evaluation, brings his or her minor child to an evaluation and treatment facility, a hospital emergency room, an inpatient facility licensed under chapter 72.23 RCW, or an inpatient facility licensed under chapter 70.41 or 71.12 RCW operating inpatient psychiatric beds for minors, the facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter ((to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility)). The notice need not be given more than once if written and verbal notice has already been provided and documented by the facility.

(2) The provision of notice must be documented by the facilities required to give notice under subsection (1) of this section and must be accompanied by a signed acknowledgment of receipt by the parent or guardian. The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. The department must revise the written notification as necessary to reflect changes in the law.

NEW SECTION. Sec. 2. A new section is added to chapter 71.34 RCW to read as follows:

An evaluation and treatment facility that fails to comply with the requirement to provide verbal and written notice to a parent or guardian of a child under RCW 71.34.375 is subject to a civil penalty of one thousand dollars for each failure to provide adequate notice, unless the evaluation and treatment facility is a hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW in which case the department of health may enforce the notice requirements using its existing enforcement authority provided in chapters 70.41 and 71.12 RCW.

Sec. 3. RCW 70.41.130 and 1991 c 3 s 335 are each amended to read as follows:

The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules

adopted under this chapter or the requirements of RCW 71.34.375. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 4. RCW 71.12.590 and 1983 c 3 s 180 are each amended to read as follows:

Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 or the requirements of RCW 71.34.375 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist.

NEW SECTION. Sec. 5. A new section is added to chapter 71.34 RCW to read as follows:

(1) By December 1, 2011, facilities licensed under chapter 70.41, 71.12, or 72.23 RCW are required to adopt policies and protocols regarding the notice requirements described in RCW 71.34.375; and

(2) By December 1, 2012, the department, in collaboration with the department of health, shall provide a detailed report to the legislature regarding the facilities' compliance with RCW 71.34.375 and subsection (1) of this section.

Passed by the Senate April 21, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 303

[Substitute Senate Bill 5232]

FINANCIAL INSTITUTIONS—SAVINGS PROGRAMS—PROMOTIONAL CONTESTS

AN ACT Relating to prize-linked savings deposits; amending RCW 9.46.0356, 19.170.020, 30.22.040, 31.12.402, 30.08.140, and 32.08.140; adding a new section to chapter 30.22 RCW; creating a new section; and providing a contingent effective date.

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

NEW SECTION. Sec. 1. The legislature finds that consumer savings is essential, both for individuals seeking to obtain the American dream, and in order to rebuild a strong economy. The legislature further finds that for most of the last two decades, consumers have borrowed more than they have saved, with current United States savings rates under six percent. The legislature intends to encourage financial institutions to develop innovative products that create incentives to encourage consumer savings, particularly savings by low-income consumers.

Sec. 2. RCW 9.46.0356 and 2000 c 228 s 1 are each amended to read as follows:

(1) The legislature authorizes;

(a) ~~A~~ business to conduct a promotional contest of chance as defined in this section, in this state, or partially in this state, whereby the elements of prize and chance are present but in which the element of consideration is not present;

(b) A financial institution, as defined in RCW 30.22.040, to conduct a promotional contest of chance under this section in which: (i) A drawing for an annual prize is held that includes as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or any other savings program and retained those funds for at least twelve months in the savings account, certificate of deposit, or other savings program; and (ii) drawings for other prizes are held from time to time that include as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or other savings program. No such contest may be conducted, either wholly or partially, by means of the internet.

(2) Promotional contests of chance under this section are not gambling as defined in RCW 9.46.0237.

(3) Promotional contests of chance shall be conducted as advertising and promotional undertakings solely for the purpose of advertising or promoting the services, goods, wares, and merchandise of a business.

(4) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(a) of this section may be required to:

(a) Pay any consideration to the promoter or operator of the business in order to participate in the contest; or

(b) Purchase any service, goods, wares, merchandise, or anything of value from the business, however, for other than contests entered through a direct mail solicitation, the promoter or sponsor may give additional entries or chances upon purchase of service, goods, wares, or merchandise if the promoter or sponsor provides an alternate method of entry requiring no consideration.

(5) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(b) of this section may be required to pay any consideration other than the deposit of funds, or purchase any service, goods, wares, merchandise, or anything of value from the financial institution.

~~(6)~~(a) As used in this section, "consideration" means anything of pecuniary value required to be paid to the promoter or sponsor in order to participate in a promotional contest. Such things as visiting a business location, placing or answering a telephone call, completing an entry form or customer survey, or furnishing a stamped, self-addressed envelope do not constitute consideration.

(b) Coupons or entry blanks obtained by purchase of a bona fide newspaper or magazine or in a program sold in conjunction with a regularly scheduled sporting event are not consideration.

~~((6))~~ (7) Unless authorized by the commission, equipment or devices made for use in a gambling activity are prohibited from use in a promotional contest.

~~((7))~~ (8) This section shall not be construed to permit noncompliance with chapter 19.170 RCW, promotional advertising of prizes, and chapter 19.86 RCW, unfair business practices.

Sec. 3. RCW 19.170.020 and 1991 c 227 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) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Prize" means a gift, award, travel coupon or certificate, free item, or any other item offered in a promotion that is different and distinct from the goods, service, or property promoted by a sponsor. "Prize" does not include an item offered in a promotion where all of the following elements are present:

(a) No element of chance is involved in obtaining the item offered in the promotion;

(b) The recipient has the right to review the merchandise offered for sale without obligation for at least seven days, and has a right to obtain a full refund in thirty days for the return of undamaged merchandise;

(c) The recipient may keep the item offered in the promotion without obligation; and

(d) The recipient is not required to attend any sales presentation or spend any sum in order to receive the item offered in the promotion.

(3) "Promoter" means a person conducting a promotion.

(4) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize, but does not include a promotional contest of chance under RCW 9.46.0356(1)(b).

(5) "Offer" means a written notice delivered by hand, mail, or other print medium offering goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize.

(6) "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.

(7) "Simulated check" means a document that is not currency or a check, draft, note, bond, or other negotiable instrument but has the visual characteristics thereof. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments and that is clearly marked as a sample, specimen, or nonnegotiable.

(8) "Continuing obligation check" means a document that is a check, draft, note, bond, or other negotiable instrument that, when cashed, deposited, or otherwise used, imposes on the payee an obligation to enter into a loan transaction. This definition does not include checks, drafts, or other negotiable instruments that are used by consumers to take advances on revolving loans, credit cards, or revolving credit accounts.

(9) "Verifiable retail value" means:

(a) A price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at retail in the local market by a person other than the promoter or sponsor; or

(b) If the prize is not available for retail sale in the local market, the retail fair market value in the local market of an item substantially similar in each significant aspect, including size, grade, quality, quantity, ingredients, and utility; or

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor.

(10) "Financial institution" means any bank, trust company, savings bank, savings and loan association, credit union, industrial loan company, or consumer

finance lender subject to regulation by an official agency of this state or the United States, and any subsidiary or affiliate thereof.

Sec. 4. RCW 30.22.040 and 1981 c 192 s 4 are each amended to read as follows:

Unless the context of this chapter otherwise requires, the terms contained in this section have the meanings indicated.

(1) "Account" means a contract of deposit between a depositor or depositors and a financial institution; the term includes a checking account, savings account, certificate of deposit, savings certificate, share account, savings bond, and other like arrangements.

(2) "Actual knowledge" means written notice to a manager of a branch of a financial institution, or an officer of the financial institution in the course of his employment at the branch, pertaining to funds held on deposit in an account maintained by the branch received within a period of time which affords the financial institution a reasonable opportunity to act upon the knowledge.

(3) "Individual" means a human being; "person" includes an individual, corporation, partnership, limited partnership, joint venture, trust, or other entity recognized by law to have separate legal powers.

(4) "Agent" means a person designated by a depositor or depositors in a contract of deposit or other document to have the authority to deposit and to make payments from an account in the name of the depositor or depositors.

(5) "Agency account" means an account to which funds may be deposited and from which payments may be made by an agent designated by a depositor. In the event there is more than one depositor named on an account, each depositor may designate the same or a different agent for the purpose of depositing to or making payments of funds from a depositor's account.

(6) "Single account" means an account in the name of one depositor only.

(7) "Joint account without right of survivorship" means an account in the name of two or more depositors and which contains no provision that the funds of a deceased depositor become the property of the surviving depositor or depositors.

(8) "Joint account with right of survivorship" means an account in the name of two or more depositors and which provides that the funds of a deceased depositor become the property of one or more of the surviving depositors.

(9) "Trust and P.O.D. accounts" means accounts payable on request to a depositor during the depositor's lifetime, and upon the depositor's death to one or more designated beneficiaries, or which are payable to two or more depositors during their lifetimes, and upon the death of all depositors to one or more designated beneficiaries. The term "trust account" does not include deposits by trustees or other fiduciaries where the trust or fiduciary relationship is established other than by a contract of deposit with a financial institution.

(10) "Trust or P.O.D. account beneficiary" means a person or persons, other than a codepositor, who has or have been designated by a depositor or depositors to receive the depositor's funds remaining in an account upon the death of a depositor or all depositors.

(11) "Depositor", when utilized in determining the rights of individuals to funds in an account, means an individual who owns the funds. When utilized in determining the rights of a financial institution to make or withhold payment, and/or to take any other action with regard to funds held under a contract of

deposit, "depositor" means the individual or individuals who have the current right to payment of funds held under the contract of deposit without regard to the actual rights of ownership thereof by these individuals. A trust or P.O.D. account beneficiary becomes a depositor only when the account becomes payable to the beneficiary by reason of having survived the depositor or depositors named on the account, depending upon the provisions of the contract of deposit.

(12) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(13) "Depositor's funds" or "funds of a depositor" means the amount of all deposits belonging to or made for the benefit of a depositor, less all withdrawals of the funds by the depositor or by others for the depositor's benefit, plus the depositor's prorated share of any interest or dividends included in the current balance of the account and any proceeds of deposit life insurance added to the account by reason of the death of a depositor.

(14) "Payment(s)" of sums on deposit includes withdrawal, payment by check or other directive of a depositor or his agent, any pledge of sums on deposit by a depositor or his agent, any set-off or reduction or other disposition of all or part of an account balance, and any payments to any person under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220.

(15) "Proof of death" means a certified or authenticated copy of a death certificate, or photostatic copy thereof, purporting to be issued by an official or agency of the jurisdiction where the death purportedly occurred, or a certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that a person is dead. In either case, the proofs constitute prima facie proof of the fact, place, date, and time of death, and identity of the decedent and the status of the dates, circumstances, and places disclosed by the record or report.

(16) "Request" means a request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(17) "Withdrawal" means payment to a person pursuant to check or other directive of a depositor.

(18) "Director" means the director of the department of financial institutions or his or her designee.

(19) "Promotional contest of chance" means a promotional contest conducted pursuant to RCW 9.46.0356(1)(b).

NEW SECTION. Sec. 5. A new section is added to chapter 30.22 RCW to read as follows:

(1) If approved by its board of directors, a financial institution may conduct a promotional contest of chance as permitted under RCW 9.46.0356(1)(b).

(2) A financial institution must not conduct a savings promotional contest of chance, if, in the opinion of the director:

(a) It is likely to or does adversely affect the financial institution's safety and soundness;

(b) It is administered in an unsafe and unsound or imprudent manner, or in a manner that is likely to or does result in actual or potential reputational harm to the financial institution; or

(c) It is likely to or has misled the financial institution's members, depositors, or the general public.

(3) The director may examine the conduct of a promotional contest of chance pursuant to his or her supervisory and examination powers under:

(a) Title 30 RCW, in regard to a bank;

(b) Title 32 RCW, in regard to a mutual or stock savings bank; or

(c) Chapter 31.12 RCW, in regard to a state credit union.

(4) The director may exercise his or her full enforcement powers under the titles and chapter in subsection (3) of this section and may issue a cease and desist order for a violation of this section.

(5) A financial institution must maintain records sufficient to facilitate an audit of a promotional contest of chance, and must provide those records to the director upon request.

Sec. 6. RCW 31.12.402 and 2001 c 83 s 14 are each amended to read as follows:

A credit union may:

(1) Issue shares to and receive deposits from its members in accordance with RCW 31.12.416;

(2) Make loans to its members in accordance with RCW 31.12.426 and 31.12.428;

(3) Pay dividends and interest to its members in accordance with RCW 31.12.418;

(4) Impose reasonable charges for the services it provides to its members;

(5) Impose financing charges and reasonable late charges in the event of default on loans, subject to applicable law, and recover reasonable costs and expenses, including, but not limited to, collection costs, and reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due, if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, sell, or otherwise dispose of interests in personal property and in real property in accordance with RCW 31.12.438;

(7) Deposit and invest funds in accordance with RCW 31.12.436;

(8) Borrow money, up to a maximum of fifty percent of its total shares, deposits, and net worth;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union, out-of-state credit union, or federal credit union. However, a credit union may not discount or sell all, or substantially all, of its assets without the approval of the director;

(10) Accept deposits of deferred compensation of its members;

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any agency or political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in credit unions, out-of-state credit unions, or federal credit unions and in organizations controlled by or fostering the interests of credit unions, including, but not limited to, a central liquidity facility organized under state or federal law;

(14) Pay additional dividends and interest to members, or an interest rate refund to borrowers;

(15) Enter into lease agreements, lease contracts, and lease-purchase agreements with members;

(16) Act as insurance agent or broker for the sale to members of:

(a) Group life, accident, health, and credit life and disability insurance; and

(b) Other insurance that other types of Washington state-chartered financial institutions are permitted to sell, on the same terms and conditions that these institutions are permitted to sell such insurance;

(17) Impose a reasonable service charge for the administration and processing of accounts that remain dormant for a period of time specified by the credit union;

(18) Establish and operate on-premises or off-premises electronic facilities;

(19) Enter into formal or informal agreements with another credit union for the purpose of fostering the development of the other credit union;

(20) Work with community leaders to develop and prioritize efforts to improve the areas where their members reside by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code;

(21) Limit the personal liability of its directors in accordance with provisions of its articles of incorporation that conform with RCW 23B.08.320;

(22) Indemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600;

(23) Conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and section 5 of this act are complied with to the satisfaction of the director; and

~~((23))~~ (24) Exercise such incidental powers as are necessary or convenient to enable it to conduct the business of a credit union.

Sec. 7. RCW 30.08.140 and 1996 c 2 s 5 are each amended to read as follows:

Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To adopt and use a corporate seal.

(2) To have perpetual succession.

(3) To make contracts.

(4) To sue and be sued, the same as a natural person.

(5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or

convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs.

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director.

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange.

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus.

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or

insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director.

(13) To have and exercise all powers necessary or convenient to effect its purposes.

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director.

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank.

(16) To exercise any other power or authority permissible under applicable state or federal law conducted by out-of-state state banks with branches in Washington to the same extent if, in the opinion of the director, those powers and authorities affect the operations of banking in Washington or affect the delivery of financial services in Washington.

(17) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and section 5 of this act are complied with to the satisfaction of the director.

Sec. 8. RCW 32.08.140 and 1999 c 14 s 17 are each amended to read as follows:

Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title.

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280.

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated.

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by its board of trustees, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection.

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business.

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies.

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will.

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business.

(13) To wind up and liquidate its business in accordance with this title.

(14) To adopt and use a common seal and to alter the same at pleasure.

(15) To exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan

associations with branches in Washington to the same extent as those savings institutions if, in the opinion of the director, the exercise of these powers and authorities by the other savings institutions affects the operations of savings banks in Washington or affects the delivery of financial services in Washington.

(16) To exercise the powers and authorities conferred by RCW 30.04.215.

(17) To exercise the powers and authorities that may be carried on by a subsidiary of the mutual savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380.

(18) To do all other acts authorized by this title.

(19) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a.

(20) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(l)(b), as long as the conditions of RCW 9.46.0356(5) and section 5 of this act are complied with to the satisfaction of the director.

NEW SECTION. Sec. 9. Sections 7 and 8 of this act take effect when the director of the department of financial institutions finds that a federal regulatory agency has, through federal law, regulation, or official regulatory interpretation, interpreted federal law to permit banks operating under the authority of Title 30 or 32 RCW to conduct a promotional contest of chance as defined in RCW 30.22.040.

Passed by the Senate April 15, 2011.

Passed by the House April 1, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 304

[Senate Bill 5304]

CASELOAD FORECAST COUNCIL—

WASHINGTON COLLEGE BOUND SCHOLARSHIP PROGRAM

AN ACT Relating to forecasting the caseloads of the state need grant program and the Washington college bound scholarship program; amending RCW 43.88C.010; and adding a new section to chapter 28B.118 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.118 RCW to read as follows:

The caseload forecast council shall estimate the anticipated caseload of the Washington college bound scholarship program and shall submit this forecast as specified in RCW 43.88C.020.

Sec. 2. RCW 43.88C.010 and 2000 c 90 s 1 are each amended to read as follows:

(1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A council member who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030.

(8) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter.

Passed by the Senate April 21, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 305

[Substitute Senate Bill 5452]

MENTAL HEALTH AND CHEMICAL DEPENDENCY DISORDERS— COORDINATION OF TREATMENT

AN ACT Relating to improving communication, collaboration, and expedited medicaid attainment with regard to persons diverted, arrested, confined or to be released from confinement or commitment who have mental health or chemical dependency disorders; amending RCW 71.05.190,

71.05.425, 10.77.165, 10.31.110, 71.05.153, 71.34.340, and 70.02.900; reenacting and amending RCW 71.05.390; adding a new section to chapter 74.09 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 effective collaboration and communication between mental health and chemical dependency treatment providers and service delivery systems and law enforcement and criminal justice agencies is important to both the care of persons with mental disorders and chemical dependency and public safety. The legislature also finds that many state and local efforts in recent years have worked to address improved treatment of persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders who are confined in a correctional institution and to improve communication and collaboration among the agencies, institutions, and professionals who are responsible for the care or custody of those persons. While numerous laws have been enacted to clarify the appropriate sharing of information between those agencies, institutions, and professionals, the legislature finds further clarification will continue to aide and improve the care of those persons and augment public safety.

NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW to read as follows:

It is permissible to provide to a correctional institution, as defined in RCW 9.94.049, with the fact, place, and date of an involuntary commitment and the fact and date of discharge or release of a person who has been involuntarily committed under chapter 71.05 or 71.34 RCW, without a person's consent, in the course of the implementation and use of the department's postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555. Disclosure under this section is mandatory for the purposes of the health insurance portability and accountability act.

Sec. 3. RCW 71.05.190 and 1997 c 112 s 13 are each amended to read as follows:

If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer. The facility shall make reasonable attempts to contact the requesting peace officer during this time to inform the peace officer that the person is not approved for admission in order to enable a peace officer to return to the facility and take the individual back into custody.

Sec. 4. RCW 71.05.390 and 2009 c 320 s 3 and 2009 c 217 s 6 are each reenacted and amended to read as follows:

Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, section 2 of this act, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: **PROVIDED**, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10)(a) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(11)(a) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(12) To the persons designated in RCW 71.05.425 and 71.05.385 for the purposes described in those sections.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the

person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except as provided in RCW 71.05.385, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Sec. 5. RCW 71.05.425 and 2009 c 521 s 158 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;
(~~and~~)

- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Sec. 6. RCW 10.77.165 and 2010 c 28 s 1 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state facility or the disappearance of such a person on conditional release or other authorized absence, the superintendent shall provide notification of the person's escape or disappearance for the public's safety or to assist in the apprehension of the person.

(a) The superintendent shall notify:

(i) State and local law enforcement officers located in the city and county where the person escaped and in the city and county which had jurisdiction of the person on the date of the applicable offense;

(ii) Other appropriate governmental agencies; and

(iii) The person's relatives.

(b) The superintendent shall provide the same notification as required by (a) of this subsection to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was convicted or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings if the person was charged with a violent offense; and

(iii) Any other appropriate persons.

(2) Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(3) The notice provisions of this section are in addition to those provided in RCW 10.77.205.

Sec. 7. RCW 10.31.110 and 2007 c 375 s 2 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours (~~(= PROVIDED, that they are)~~). The individual must be examined by a mental health professional within three hours of ((their)) arrival;

(b) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(c) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) If the individual is released to the community, the mental health provider shall inform the arresting officer of the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

~~((3))~~ (4) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

~~((4))~~ (5) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

~~((5))~~ (6) The police officer is immune from liability for any good faith conduct under this section.

Sec. 8. RCW 71.05.153 and 2007 c 375 s 8 are each amended to read as follows:

(1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis stabilization unit, an evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the mental health provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider.

Sec. 9. RCW 71.34.340 and 2005 c 453 s 6 are each amended to read as follows:

The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/"

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for

the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside;

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and section 2 of this act.

Sec. 10. RCW 70.02.900 and 2000 c 5 s 4 are each amended to read as follows:

(1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, ~~((70.39,))~~ 70.96A, 71.05, ~~((and))~~ 71.34, and 74.09 RCW and rules adopted under these provisions.

Passed by the Senate April 18, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 306

[Substitute Senate Bill 5487]

EGGS AND EGG PRODUCTS—INTRASTATE COMMERCE

AN ACT Relating to eggs and egg products in intrastate commerce; amending RCW 69.25.020, 69.25.050, and 69.25.250; adding new sections to chapter 69.25 RCW; and providing an effective date.

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

Sec. 1. RCW 69.25.020 and 1995 c 374 s 25 are each amended to read as follows:

When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(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 any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396(~~(, as enacted or hereafter amended: PROVIDED, That)~~); however, an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs or egg products for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer (~~or consumer~~). For the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11)(a) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as ~~the~~ the director may prescribe to assure that the egg ingredients are not adulterated and ~~(such products)~~ are not represented as egg products.

(b) The following products are not included in the definition of "egg product" if they are prepared from eggs or egg products that have been either inspected by the United States department of agriculture or by the department under a cooperative agreement with the United States department of agriculture: Freeze-dried products, imitation egg products, egg substitutes, dietary foods, dried no-bake custard mixes, egg nog mixes, acidic dressings, noodles, milk and egg dip, cake mixes, French toast, balut and other similar ethnic delicacies, and sandwiches containing eggs or egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

Sec. 2. RCW 69.25.050 and 1995 c 374 s 26 are each amended to read as follows:

(1)(a) No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department (~~(; such license shall expire on the master license expiration date)~~).

(b) Application for an egg dealer license or egg dealer branch license (~~(; shall)~~) must be made through the master license system as provided under chapter 19.02 RCW and expires on the master license expiration date. The annual egg dealer license fee (~~(shall be)~~) is thirty dollars and the annual egg dealer branch license fee (~~(shall be)~~) is fifteen dollars. A copy of the master license (~~(shall)~~) must be posted at each location where (~~(such))~~ the licensee operates. (~~(Such))~~ The application (~~(shall)~~) must include the full name of the applicant for the license (~~(and)~~), the location of each facility (~~(he)~~) the applicant intends to operate, and, if applicable, documentation of compliance with section 3 or 4 of this act.

(2) If (~~(such))~~ an applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. (~~(Such))~~ The application (~~(shall)~~) must further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service

of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director.

(3) The applicant must be issued a license or renewal under this section upon the approval of the application and compliance with the provisions of this chapter, including the applicable ((regulations)) rules adopted ((hereunder)) by the department((, the applicant shall be issued a license or renewal thereof)).

~~((Such))~~ (4) The license and permanent egg handler or dealer's number ((shall be)) is nontransferable.

NEW SECTION. Sec. 3. A new section is added to chapter 69.25 RCW to read as follows:

(1) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2026, must include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations:

(a) With a current certification under the 2010 version of the united egg producers animal husbandry guidelines for United States egg laying flocks for conventional cage systems or cage-free systems or a subsequent version of the guidelines recognized by the department in rule; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(2) All new and renewal applications submitted under RCW 69.25.050 before January 1, 2017, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built between January 1, 2012, and December 31, 2016, are either:

(a) Approved under, or convertible to, the American humane association facility system plan for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are convertible to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(3) All new and renewal applications submitted under RCW 69.25.050 between January 1, 2017, and December 31, 2025, must, in addition to complying with subsection (1) of this section, include proof that all eggs and egg products provided in intrastate commerce by the applicant are produced by commercial egg layer operations whose housing facilities, if built on or after January 1, 2012, are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(4) All new and renewal applications submitted under RCW 69.25.050 on or after January 1, 2026, must include proof that all eggs and egg products provided

in intrastate commerce by the applicant are produced by commercial egg layer operations that are either:

(a) Approved under the American humane association facility system plan and audit protocol for enriched colony housing in effect on January 1, 2011, or a subsequent version of the plan recognized by the department in rule and, in addition, are operated to the standards identified in section 5 of this act; or

(b) Operated in strict compliance with any standards, adopted by the department in rule, that are equivalent to or more stringent than the standards identified in (a) of this subsection.

(5) The following are exempt from the requirements of subsections (2) and (3) of this section:

(a) Applicants with fewer than three thousand laying chickens; and

(b) Commercial egg layer operations when producing eggs or egg products from turkeys, ducks, geese, guineas, or other species of fowl other than domestic chickens.

NEW SECTION. Sec. 4. A new section is added to chapter 69.25 RCW to read as follows:

Any egg handler or dealer involved with the in-state production of eggs or egg products only intended for sale outside of the state of Washington must ensure that the associated commercial egg layer operation is in compliance with the applicable standards as provided in section 3 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 69.25 RCW to read as follows:

(1) All commercial egg layer operations required under section 3 of this act to meet the American humane association facility system plan, or an equivalent to the plan, must also ensure that all hens in the operation are provided with:

(a) No less than one hundred sixteen and three-tenths square inches of space per hen; and

(b) Access to areas for nesting, scratching, and perching.

(2) The requirements of this section apply for any commercial egg layer operation on the same dates that section 3 of this act requires compliance with the American humane association facility system plan or an equivalent to the plan.

Sec. 6. RCW 69.25.250 and 1995 c 374 s 29 are each amended to read as follows:

(1)(a) There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules ~~((and regulations))~~ issued by the director. ~~((Such))~~ The assessment ~~((shall be))~~ is applicable to all eggs entering intrastate commerce, except as provided in RCW 69.25.170 and 69.25.290~~((--Such assessment shall))~~, and must be paid to the director on a monthly basis on or before the tenth day following the month ~~((such))~~ the eggs enter intrastate commerce.

(b) The director may require reports by egg handlers or dealers along with the payment of the assessment fee. ~~((Such))~~ The reports may include any and all pertinent information necessary to carry out the purposes of this chapter.

(c) The director may, by ~~((regulations))~~ rule, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number.

(2) Egg products in intrastate commerce are exempt from the assessment in subsection (1) of this section.

NEW SECTION. Sec. 7. This act takes effect August 1, 2012.

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.

Passed by the Senate April 21, 2011.

Passed by the House April 11, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 307

[Substitute Senate Bill 5579]

HARASSMENT

AN ACT Relating to harassment; amending RCW 10.14.150, 10.14.020, 10.14.080, 9A.46.040, and 9A.46.080; adding a new section to chapter 10.14 RCW; and prescribing penalties.

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

Sec. 1. RCW 10.14.150 and 2005 c 196 s 1 are each amended to read as follows:

(1) The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(3) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

Sec. 2. RCW 10.14.020 and 2001 c 260 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) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

Sec. 3. RCW 10.14.080 and 2001 c 311 s 1 are each amended to read as follows:

(1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to

civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- (a) Restraining the respondent from making any attempts to contact the petitioner;
- (b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and
- (d) Considering the provisions of RCW 9.41.800.

(7) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

(8) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under chapter 26.09 RCW or under a separate action commenced with a summons and complaint to determine title or possession of real property.

(9) The court in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall not limit the respondent's right to care, control, or custody of the respondent's minor child, unless that order is issued under chapter 13.32A, 26.09, 26.10, or 26.26 RCW.

(10) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

~~((8))~~ (11) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

Sec. 4. RCW 9A.46.040 and 1985 c 288 s 4 are each amended to read as follows:

(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) An intentional violation of a court order issued under this section or an equivalent local ordinance is a misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court.

Sec. 5. RCW 9A.46.080 and 1985 c 288 s 8 are each amended to read as follows:

The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

NEW SECTION. Sec. 6. A new section is added to chapter 10.14 RCW to read as follows:

Before granting an order under this chapter, the court may consult the judicial information system, if available, to determine criminal history or the pendency of other proceedings involving the parties.

Passed by the Senate April 19, 2011.

Passed by the House April 6, 2011.

Approved by the Governor May 10, 2011.
Filed in Office of Secretary of State May 11, 2011.

CHAPTER 308

[Senate Bill 5584]

APPRENTICESHIPS—LABOR AND INDUSTRIES

AN ACT Relating to conforming with federal labor standards for apprenticeship programs; amending RCW 49.04.010, 49.04.030, 49.04.040, 49.04.050, and 49.04.060; and adding a new section to chapter 49.04 RCW.

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

Sec. 1. RCW 49.04.010 and 2001 c 204 s 1 are each amended to read as follows:

The department of labor and industries is the agency with responsibility and accountability for apprenticeship within the state for federal purposes. The director of labor and industries shall appoint ~~((an))~~ a regulatory apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until a successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. A designated representative from each of the following: The workforce training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio members of the apprenticeship council. Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council is authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The ~~((council))~~ director is ~~((further))~~ authorized to ~~((issue such))~~ adopt rules as may be necessary to carry out the intent and purposes of this chapter, after consultation with the council and receiving the council's recommendations, including a procedure to resolve an impasse should a tie vote of the council occur, and perform such other duties as are hereinafter imposed.

Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public.

Sec. 2. RCW 49.04.030 and 2001 c 204 s 2 are each amended to read as follows:

~~((Subject to the confirmation of the state apprenticeship council by a majority vote,))~~ The director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; ~~(and)~~ (5) when authorized by the council, terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements; and (6) conduct reviews for compliance with this chapter, rules established under this chapter, and 29 C.F.R. Parts 29 and 30.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter.

Sec. 3. RCW 49.04.040 and 2001 c 204 s 3 are each amended to read as follows:

Upon July 22, 2001, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted ~~((by the apprenticeship council))~~ under this chapter, and 29 C.F.R. Parts 29 and 30 and must be approved by the apprenticeship council. ~~((Apprenticeship committees may be approved whenever the apprentice training needs justify such establishment.))~~ Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by ~~((council adopted))~~ rules adopted under this chapter. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants.

Sec. 4. RCW 49.04.050 and 2001 c 204 s 4 are each amended to read as follows:

To be eligible for registration, apprenticeship program standards must conform to the rules adopted ~~((by the apprenticeship council))~~ under this chapter.

Sec. 5. RCW 49.04.060 and 2001 c 204 s 5 are each amended to read as follows:

For the purposes of this chapter an apprenticeship agreement is a written agreement between an apprentice and either the apprentice's ~~((employer or employers))~~ program sponsor, or an apprenticeship committee acting as agent for ~~((an employer or employers))~~ a program sponsor, containing the terms and conditions of the employment and training of the apprentice.

NEW SECTION. Sec. 6. A new section is added to chapter 49.04 RCW to read as follows:

(1) Any decision of the apprenticeship council affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed to the director of labor and industries by filing a notice of appeal with the director within thirty days of the apprenticeship council's written decision. Any decision of the council affecting registration and oversight of apprenticeship programs and agreements for federal purposes not appealed within thirty days is final and binding, and not subject to further appeal.

(2) Upon receipt of a notice of appeal, the director or designee shall review the record created by the council and shall issue a written determination including his or her findings. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW.

(3) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

Passed by the Senate March 2, 2011.

Passed by the House April 8, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 309

[Engrossed Substitute Senate Bill 5656]

INDIAN CHILD WELFARE ACT

AN ACT Relating to a state Indian child welfare act; amending RCW 13.32A.152, 13.34.040, 13.34.070, 13.34.105, 13.34.130, 13.34.132, 13.34.190, 26.10.034, 26.33.040, 26.33.240, and 74.13.350; reenacting and amending RCW 13.34.030, 13.34.065, and 13.34.136; adding a new chapter to Title 13 RCW; and repealing RCW 13.34.250.

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

NEW SECTION. Sec. 1. SHORT TITLE. This chapter shall be known and cited as the "Washington state Indian child welfare act."

NEW SECTION. Sec. 2. APPLICATION. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

NEW SECTION. Sec. 3. INTENT. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws.

NEW SECTION. Sec. 4. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian

prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

NEW SECTION. Sec. 5. DETERMINATION OF INDIAN STATUS. Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by section 7 of this act.

NEW SECTION. Sec. 6. JURISDICTION. (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with section 14 of this act.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

NEW SECTION. Sec. 7. NOTICE. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days

after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under section 7 of this act, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914.

NEW SECTION. Sec. 8. TRANSFER OF JURISDICTION. (1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

- (a) Either of the child's parents;
- (b) The child's Indian custodian;
- (c) The child's tribe; or
- (d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement.

NEW SECTION. Sec. 9. INTERVENTION. The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child.

NEW SECTION. Sec. 10. FULL FAITH AND CREDIT. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

NEW SECTION. Sec. 11. RIGHT TO COUNSEL. In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that the appointment is in the best interests of the Indian child.

NEW SECTION. Sec. 12. RIGHT TO ACCESS TO EVIDENCE. Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

NEW SECTION. Sec. 13. EVIDENTIARY REQUIREMENTS. (1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any

harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to section 9 of this act or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's

supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

NEW SECTION. Sec. 14. EMERGENCY REMOVAL OF AN INDIAN CHILD. (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under section 7 of this act for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

NEW SECTION. Sec. 15. CONSENT. (1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law.

NEW SECTION. Sec. 16. IMPROPER REMOVAL OF AN INDIAN CHILD. If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

NEW SECTION. Sec. 17. REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

NEW SECTION. Sec. 18. PLACEMENT PREFERENCES. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

- (a) In the least restrictive setting;
- (b) Which most approximates a family situation;
- (c) Which is in reasonable proximity to the Indian child's home; and
- (d) In which the Indian child's special needs, if any, will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

- (a) A member of the child's extended family.

- (b) A foster home licensed, approved, or specified by the child's tribe.
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- (d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- (e) A non-Indian child foster care agency approved by the child's tribe.
- (f) A non-Indian family that is committed to:
 - (i) Promoting and allowing appropriate extended family visitation;
 - (ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and
 - (iii) Participating in the cultural and ceremonial events of the child's tribe.
- (3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:
 - (a) Extended family members;
 - (b) An Indian family of the same tribe as the child;
 - (c) An Indian family that is of a similar culture to the child's tribe;
 - (d) Another Indian family; or
 - (e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.
- (4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.
- (5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.
- (6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.
- (7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe.

NEW SECTION. Sec. 19. COMPLIANCE. (1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

(2) Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. Sec. 1914.

NEW SECTION. Sec. 20. SEVERABILITY. 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. 21. RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3)~~((a) Whenever)~~ When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the ~~((petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.)~~ provisions of chapter 13.— RCW (the new chapter created in section 35 of this act) apply.

Sec. 22. RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s 10, and 2010 c 94 s 6 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when 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 responsibilities despite an ability to exercise such rights and responsibilities. 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.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "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: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) 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.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests 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.

(10) "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.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "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, disability lifeline benefits, 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 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.

(13) "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.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in ~~((25 U.S.C. See. 1903(4))~~ section 4 of this act.

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that 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 the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to

provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

Sec. 23. RCW 13.34.040 and 2004 c 64 s 3 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If the child is an Indian child ~~((as defined under the Indian child welfare act, the provisions of the act))~~ chapter 13.— RCW (the new chapter created in section 35 of this act) shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13.— RCW (the new chapter created in section 35 of this act) have been satisfied.

Sec. 24. RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act, whether the provisions of the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.— RCW (the new chapter created in section 35 of this act), including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the

child's best interests. The relative or other suitable person must be willing and available to:

- (i) Care for the child and be able to meet any special needs of the child;
- (ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and
- (iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's 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, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances.

No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

Sec. 25. RCW 13.34.070 and 2004 c 64 s 4 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10)~~((a))~~ Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in section 4 of this act is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall ~~((be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.)~~ comply with section 7 of this act.

Sec. 26. RCW 13.34.105 and 2010 c 180 s 3 are each amended to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child; ~~(and)~~

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in section 4 of this act, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

Sec. 27. RCW 13.34.130 and 2010 c 288 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 social study 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 determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in this subsection (1)(b). The court shall consider the child's existing relationships and attachments when determining placement.

(2) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in ~~((RCW 13.34.250 and in 25 U.S.C. Sec. 1915))~~ section 18 of this act.

(3) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section 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, including housing assistance, 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:

- (a) There is no parent or guardian available to care for such child;
- (b) The parent, guardian, or legal custodian is not willing to take custody of the child; or
- (c) 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.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

- (i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and
- (ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(6) 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 requirements of RCW 13.34.132 are met.

(7) 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 or other suitable person, the child shall remain in foster care and the court shall direct the department or 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 or other person 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 or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person 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, sibling 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 or other suitable person's home, subject to review by the court.

Sec. 28. RCW 13.34.132 and 2000 c 122 s 16 are each amended to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the department or the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, 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) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) 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. In the case of a parent of an Indian child, as defined in ~~((the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903))~~ section 4 of this act, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of:
(A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

Sec. 29. RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are each reenacted and amended to read as follows:

(1) Whenever a child is ordered removed from the home, 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.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(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, including a tribal customary adoption as defined in section 4 of this act; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency 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 RCW 13.34.130(~~(5)~~) (6), 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, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising 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 department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. 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. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision

for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(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 plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~(5)~~) (6), 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 department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). 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.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~(3)~~) (4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and

when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

Sec. 30. RCW 13.34.190 and 2010 c 288 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) The provisions of chapter 13.— RCW (the new chapter created in section 35 of this act) must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child)) section 4 of this act.

Sec. 31. RCW 26.10.034 and 2004 c 64 s 1 are each amended to read as follows:

(1)~~((a))~~ Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If the child is an Indian child ~~((as defined under the Indian child welfare act, the provisions of the act)),~~ chapter 13.— RCW (the new chapter created in section 35 of this act) shall apply.

~~((b) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.)~~

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice ~~((requirements))~~ and evidentiary requirements under the federal Indian child welfare act and chapter 13.— RCW (the new chapter created in section 35 of this act) have been satisfied.

Sec. 32. RCW 26.33.040 and 2004 c 64 s 2 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If the child is an Indian child ~~((as defined under the Indian child welfare act, the provisions of the act)),~~ chapter 13.— RCW (the new chapter created in section 35 of this act) shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.— RCW (the new chapter created in section 35 of this act) does apply, the decree or order must also contain a finding that all notice, consent, and evidentiary requirements ~~((and evidentiary requirements))~~ under the federal Indian child welfare act, chapter 13.— RCW (the new chapter created in section 35 of this act), and this section have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether an Indian child ~~((as defined under the Indian child welfare act, 25 U.S.C. Sec. 1903;))~~ is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the ~~((Soldiers and Sailors))~~ federal servicemembers civil relief act of ((+940)) 2004, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the ~~((Soldiers and Sailors))~~ federal servicemembers civil relief act of ((+940)) 2004 does or does not apply.

Sec. 33. RCW 26.33.240 and 1987 c 170 s 8 are each amended to read as follows:

(1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of ~~((25 U.S.C. Sec. 1915))~~ section 18 of this act or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child.

Sec. 34. RCW 74.13.350 and 2004 c 183 s 4 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))~~ in accordance with section 15 of this act. 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.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

NEW SECTION. Sec. 35. Sections 1 through 20 of this act constitute a new chapter in Title 13 RCW.

NEW SECTION. Sec. 36. RCW 13.34.250 (Preference characteristics when placing Indian child in foster care home) and 1979 c 155 s 53 are each repealed.

Passed by the Senate April 21, 2011.

Passed by the House April 18, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 310

[Senate Bill 5731]

WASHINGTON MANUFACTURING SERVICES

AN ACT Relating to Washington manufacturing services; and amending RCW 24.50.010.

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

Sec. 1. RCW 24.50.010 and 2006 c 34 s 2 are each amended to read as follows:

(1) Washington manufacturing services is organized as a private, nonprofit corporation in accordance with chapter 24.03 RCW and this section. The mission of the ~~((center))~~ corporation is to operate a modernization extension system, coordinate a network of public and private modernization resources, and stimulate the competitiveness of small and midsize manufacturers in Washington.

(2) (~~Washington manufacturing services shall~~) The corporation must be governed by a board of directors. A majority of the board of directors shall be representatives of small and medium-sized manufacturing firms and industry associations, networks, or consortia. The board (~~shall~~) must also include at least one member representing labor unions or labor councils and, as ex officio members, the director of the department of (~~community, trade, and economic development~~) commerce, the executive director of the state board for community and technical colleges, and the director of the workforce training and education coordinating board, or their respective designees.

(3) (~~Washington manufacturing services~~) The corporation may be known as impact Washington and may:

(a) Charge fees for services, make and execute contracts with any individual, corporation, association, public agency, or any other entity, and employ all other legal instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter; and

(b) Receive funds from federal, state, or local governments, private businesses, foundations, or any other source for purposes consistent with this chapter.

(4) (~~Washington manufacturing services shall~~) The corporation must:

(a) Develop policies, plans, and programs to assist in the modernization of businesses in targeted sectors of Washington's economy and coordinate the delivery of modernization services;

(b) Provide information about the advantages of modernization and the modernization services available in the state to federal, state, and local economic development officials, state colleges and universities, and private providers;

(c) Collaborate with the Washington quality initiative in the development of manufacturing quality standards and quality certification programs;

(d) Collaborate with industry sector and cluster associations to inform import-impacted manufacturers about federal trade adjustment assistance funding;

(e) Serve as an information clearinghouse and provide access for users to the federal manufacturing extension partnership national research and information system; and

~~((e))~~ (f) Provide, either directly or through contracts, assistance to industry or cluster associations, networks, or consortia, that would be of value to their member firms in:

(i) Adopting advanced business management practices such as strategic planning and total quality management;

(ii) Developing mechanisms for interfirm collaboration and cooperation;

(iii) Appraising, purchasing, installing, and effectively using equipment, technologies, and processes that improve the quality of goods and services and the productivity of the firm;

(iv) Improving human resource systems and workforce training in a manner that moves firms toward flexible, high-performance work organizations;

(v) Developing new products;

(vi) Conducting market research, analysis, and development of new sales channels and export markets;

(vii) Improving processes to enhance environmental, health, and safety compliance; and

(viii) Improving credit, capital management, and business finance skills.

(5) Between thirty-five and sixty-five percent of the funds received by the corporation from the state must be used by the corporation for carrying out the duties under subsection (4)(f) of this section, consistent with the intent of RCW 24.50.005(2).

Passed by the Senate April 20, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 311

[Substitute Senate Bill 5741]

ECONOMIC DEVELOPMENT COMMISSION

AN ACT Relating to the economic development commission; amending RCW 43.162.005, 43.162.010, 43.162.015, 43.162.020, 43.162.025, and 43.162.030; reenacting and amending RCW 43.84.092; and adding new sections to chapter 43.162 RCW.

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

Sec. 1. RCW 43.162.005 and 2007 c 232 s 1 are each amended to read as follows:

~~(1) The legislature finds that ((Washington's innovation and trade-driven economy has provided tremendous opportunities for citizens of the state, but that there is no guarantee that globally competitive firms will continue to grow and locate in the state. The current economic development system is fragmented among numerous programs, councils, centers, and organizations with inadequate overall coordination and insufficient guidance built into the system to ensure that the system is responsive to its customers. The current economic development system's data-gathering and evaluation methods are inconsistent and unable to provide adequate information for determining how well the system is performing on a regular basis so the system may be held accountable for its outcomes.~~

~~The legislature also finds that developing a comprehensive economic development strategic plan to guide the operation of effective economic development programs, including workforce training, infrastructure development, small business assistance, technology transfer, and export assistance, is vital to the state's efforts to increase the competitiveness of state businesses, encourage employment growth, increase state revenues, and generate economic well-being. There is a need for responsive and consistent involvement of the private sector in the state's economic development efforts. The legislature finds that there is a need for the development of coordination criteria for business recruitment, expansion, and retention activities carried out by the state and local entities. It is the intent of the legislature)) in order to achieve long-term global competitiveness, prosperity, and economic opportunity for all the state's citizens, Washington state must become the most attractive, creative, and fertile investment environment for innovation in the world.~~

~~(2) The legislature finds that the state must take a strategic approach to fostering an innovation economy, and that success will be driven by public and private sector leaders who are committed to developing and advocating a shared vision and collaborating across organizational and geographic boundaries. The~~

legislature therefore intends to create an economic development commission that will provide planning, coordination, evaluation, monitoring, and policy analysis and development for the state economic development system as a whole, and advice to the governor and legislature concerning the state economic development system.

Sec. 2. RCW 43.162.010 and 2007 c 232 s 2 are each amended to read as follows:

(1) The Washington state economic development commission is established to ~~((oversee the economic development strategies and policies of the department of community, trade, and economic development))~~ assist the governor and legislature by providing leadership, direction, and guidance on a long-term and systematic approach to economic development that will result in enduring global competitiveness, prosperity, and economic opportunity for all the state's citizens.

(2)(a) The ~~((Washington state economic development commission shall consist of eleven voting members))~~ commission consists of twenty-four members. Fifteen of the members must be voting members appointed by the governor as follows: ~~((Six))~~ Eight representatives of the private sector, one representative of labor from east of the crest of the Cascade mountains and one representative of labor from west of the crest of the Cascade mountains, one representative of port districts, one representative of four-year state public higher education, one representative ~~((for))~~ of state community or technical colleges, one representative with expertise in international trade, and one representative of associate development organizations. The director of the department of ~~((community, trade, and economic development))~~ commerce, the director of the workforce training and education coordinating board, the commissioner of the employment security department, the secretary of the department of transportation, the director of the department of agriculture, and the chairs and ranking minority members of the standing committees of the house of representatives and the senate overseeing economic development policies ~~((shall))~~ must serve as nonvoting ex officio members.

(b) Members may not designate alternates, substitutes, or surrogates. However, members may participate in a meeting by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting.

(c) The chair of the commission ~~((shall))~~ must be a private sector voting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. ~~((In selecting the chair, the governor shall seek a person who understands the future economic needs of the state and nation and the role the state's economic development system has in meeting those needs.~~

~~((b))~~ A vice chair must be elected by members of the commission but may not be the director of an executive branch agency or a member of the legislature. The vice chair must exercise the duties of the commission chair in his or her absence.

(d) In making the appointments, the governor ~~((shall))~~ must consult with the commission and with organizations that have an interest in economic development, including, but not limited to, industry associations, labor organizations, minority business associations, economic development councils,

chambers of commerce, port associations, tribes, and the chairs of the legislative committees with jurisdiction over economic development.

~~((e))~~ (e) The members ~~((shall))~~ must be representative of the geographic regions of the state, including eastern and central Washington, as well as represent the ethnic diversity of the state. Private sector members ~~((shall))~~ must represent existing and emerging industries, small businesses, women-owned businesses, and minority-owned businesses. Members of the commission ~~((shall))~~ must serve statewide interests while preserving their diverse perspectives, and ~~((shall))~~ must be recognized leaders in their fields with demonstrated experience in economic development, innovation, or disciplines related to economic development.

(3) Members appointed by the governor ~~((shall))~~ serve at the pleasure of the governor for not more than two consecutive three-year terms, except that, as determined by the governor, the terms of four of the appointees on the commission on the effective date of this section expire in 2012, the terms of four of the appointees on the commission on the effective date of this section expire in 2013, and the terms of three of the appointees on the commission on the effective date of this section expire in 2014. Thereafter all terms are for three years. Vacancies must be filled in the same manner as the original appointments.

(4) The commission may establish committees as it desires, and may invite nonmembers of the commission to serve as committee members.

(5) The executive director of the commission ~~((shall))~~ must be appointed by the governor with the consent of the ~~((voting members of the))~~ commission. The salary of the executive director must be set by the governor with the consent of the commission. The governor may dismiss the executive director only with the approval of a majority vote of the commission. The commission, by a majority vote, may dismiss the executive director with the approval of the governor. The commission must evaluate the performance of the executive director in a manner consistent with the process used by the governor to evaluate the performance of agency directors.

(6) The commission may adopt ~~((rules))~~ policies and procedures for its own governance.

NEW SECTION. Sec. 3. A new section is added to chapter 43.162 RCW to read as follows:

For the purposes of this chapter, unless the context clearly requires otherwise, "commission" means the Washington state economic development commission created under RCW 43.162.005.

Sec. 4. RCW 43.162.015 and 2007 c 232 s 3 are each amended to read as follows:

(1) ~~((The commission shall employ an executive director.))~~ The executive director ~~((shall serve as chief executive officer of the commission and shall))~~ of the commission must serve as its chief executive officer. Subject to available resources and in accordance with commission direction, the executive director must:

(a) Administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, utilize staff of existing operating agencies to the fullest extent possible, and employ outside consulting and service agencies when appropriate((-

~~(2) The executive director may not be the chair of the commission.~~

~~(3) The executive director shall);~~

(b) Appoint necessary staff who ~~((shall be))~~ are exempt from the provisions of chapter 41.06 RCW. The executive director's appointees ~~((shall))~~ serve at the executive director's pleasure on such terms and conditions as the executive director determines but subject to chapter 42.52 RCW.

~~((4) The executive director shall appoint and employ such other employees as may be required for the proper discharge of the functions of the commission.~~

~~(5))~~ The executive director shall, subject to the availability of funds for this purpose, implement a hiring process for a research manager responsible for managing the data collection, database, and evaluation functions under RCW 43.162.020 and 43.162.025. By October 1, 2011, the executive director must make a recommendation to the commission on a qualified candidate to fill the research manager position. The commission is responsible for making the final decision on hiring the research manager;

(c) Appoint employees who are subject to the provisions of chapter 41.06 RCW; and

(d) Contract with additional persons who have specific technical expertise if needed to carry out a specific, time-limited project.

(2) The executive director ~~((shall exercise such additional powers))~~ must exercise additional authority, other than rule making, as may be delegated by the commission.

(3) The executive director must develop for commission review and approval an annual commission budget and work plan in accordance with the omnibus appropriations bill approved by the legislature, and must present a fiscal report to the commission quarterly for its review and comment.

(4) The executive director of the commission must report solely to the governor and the commissioners on matters pertaining to commission operations.

Sec. 5. RCW 43.162.020 and 2009 c 151 s 9 are each amended to read as follows:

~~((The Washington state economic development commission shall:~~

~~(1) Concentrate its major efforts on planning, coordination, evaluation, policy analysis, and recommending improvements to the state's economic development system using, but not limited to, the "Next Washington" plan and the global competitiveness council recommendations;~~

~~(2) Develop and maintain on a biennial basis a state comprehensive plan for economic development, including but not limited to goals, objectives, and priorities for the state economic development system; identify the elements local associate development organizations must include in their countywide economic development plans; and review the state system for consistency with the state comprehensive plan. The plan shall) (1) The commission must concentrate its major efforts on strategic planning, policy research and analysis, advocacy, evaluation, and promoting coordination and collaboration.~~

(2) During each regular legislative session, the commission must consult with appropriate legislative committees about the state's economic development needs and opportunities.

(3)(a) By October 1st of each even-numbered year, the commission must submit to the governor and legislature a biennial comprehensive statewide

economic development strategy with a report on progress from the previous comprehensive strategy.

(b) The comprehensive statewide economic development strategy must include the industry clusters in the state and the strategic clusters targeted by the commission for economic development efforts. The commission ~~((shall))~~ must consult with the workforce training and education coordinating board and include labor market and economic information by the employment security department in developing the list of clusters and strategic clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW.

(4)(a) In developing the ~~((state comprehensive plan for economic development))~~ comprehensive statewide economic development strategy, the commission ~~((shall))~~ must use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input

~~(3) Establish and maintain an inventory of the programs of the state economic development system and related state programs; perform a biennial assessment of the ongoing and strategic economic development needs of the state; and assess the extent to which the economic development system and related programs represent a consistent, coordinated, efficient, and integrated approach to meet such needs; and~~

~~(4) Produce a biennial report to the governor and the legislature on progress by the commission in coordinating the state's economic development system and meeting the other obligations of this chapter, as well as include recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination.~~

~~The commission may delegate to the executive director any of the functions of this section).~~

(b) The comprehensive statewide economic development strategy may include:

(i) An assessment of the state's economic vitality;

(ii) Recommended goals, objectives, and priorities for the next biennium, and the future;

(iii) A common set of outcomes and benchmarks for the economic development system as a whole;

(iv) Recommendations for removing barriers and promoting collaboration among participants in the innovation ecosystem;

(v) An inventory of existing relevant programs compiled by the commission from materials submitted by agencies;

(vi) Recommendations for expanding, discontinuing, or redirecting existing programs, or adding new programs; and

(vii) Recommendations of best practices and public and private sector roles in implementing the comprehensive statewide economic development strategy.

(5) In developing the biennial statewide economic development strategy, plans, inventories, assessments, and policy research, the commission must consult, collaborate, and coordinate with relevant state agencies, private sector businesses, nonprofit organizations involved in economic development, trade associations, and relevant local organizations in order to avoid duplication of effort.

(6) State agencies must cooperate with the commission and provide information as the commission may reasonably request.

(7) The commission must develop a biennial budget request for approval by the office of financial management. The commission must adopt an annual budget and work plan in accordance with the omnibus appropriations bill approved by the legislature.

(8)(a) The commission and its fiscal agent must jointly develop and adopt a memorandum of understanding to outline and establish clear lines of authority and responsibility between them related to budget and administrative services.

(b) The memorandum of understanding may not provide any additional grant of authorities to the commission or the fiscal agent that is not already provided for by statute, nor diminish any authorities or powers granted to either party by statute.

(c) Periodically, but not less often than biannually, the commission and fiscal agent must review the memorandum of understanding and, if necessary, recommend changes to the other party.

(d) As provided generally under RCW 43.162.015, the executive director of the commission must report solely to the governor and the commissioners on matters pertaining to commission operations.

(9) To maintain its objectivity and concentration on strategic planning, policy research and analysis, and evaluation, the commission may not take an administrative role in the delivery of services. However, subject to available resources and consistent with its work plan, the commission or the executive director may conduct outreach activities such as regional forums and best practices seminars.

(10) The commission must evaluate its own performance on a regular basis.

(11) The commission may accept gifts, grants, donations, sponsorships, or contributions from any federal, state, or local governmental agency or program, or any private source, and expend the same for any purpose consistent with this chapter.

Sec. 6. RCW 43.162.025 and 2007 c 232 s 5 are each amended to read as follows:

(1) Subject to available funds, the Washington state economic development commission may:

~~((+))~~ (a) Periodically review for consistency with the state comprehensive plan for economic development the policies and plans established for:

~~((+))~~ (i) Business and technical assistance by the small business development center, the Washington manufacturing service, the Washington technology center, associate development organizations, the department of ~~((community, trade, and economic development))~~ commerce, and the office of minority and women-owned business enterprises;

~~((+))~~ (ii) Export assistance by the small business export finance assistance center, the international marketing program for agricultural commodities and

trade, the department of agriculture, the center for international trade in forest products, associate development organizations, and the department of ~~((community, trade, and economic development))~~ commerce; and

~~((e))~~ (iii) Infrastructure development by the department of ~~((community, trade, and economic development))~~ commerce and the department of transportation; and

~~((2))~~ (b) Review and make recommendations to the office of financial management and the legislature on budget requests and legislative proposals relating to the state economic development system for purposes of consistency with the state comprehensive plan for economic development(;

~~(3) Provide for coordination among the different agencies, organizations, and components of the state economic development system at the state level and at the regional level;~~

~~(4) Advocate for the state economic development system and for meeting the needs of industry associations, industry clusters, businesses, and employees;~~

~~(5) Identify partners and).~~

(2) The Washington state economic development commission must:

(a) In collaboration with the department of commerce and other partners, develop a plan ~~((to develop))~~ for a consistent and reliable database on participation rates, costs, program activities, and outcomes from publicly funded economic development programs in this state by ~~((January 1, 2011-))~~ October 1, 2012;

~~((a) In coordination with the development of the database, the commission shall))~~

(b) By October 1, 2012, establish standards for data collection and maintenance for providers in the economic development system in a format that is accessible to use by the commission. The commission ~~((shall))~~ must require a minimum of common core data to be collected by each entity providing economic development services with public funds and shall develop requirements for minimum common core data in consultation with the economic climate council, the office of financial management, and the providers of economic development services;

~~((b) The commission shall))~~ (c) Establish minimum common standards and metrics for program evaluation of economic development programs, and monitor such program evaluations; and

~~((c) The commission shall,))~~ (d) Beginning no later than January 1, 2012, periodically administer, based on a schedule established by the commission, scientifically based outcome evaluations of the state economic development system including, but not limited to, surveys of industry associations, industry cluster associations, and businesses served by publicly funded economic development programs; matches with employment security department payroll and wage files; and matches with department of revenue tax files; and

~~((e))~~ (e) Evaluate proposals for expenditure from the economic development strategic reserve account and recommend expenditures from the account.

~~((The commission may delegate to the director any of the functions of this section.))~~ (3) The governor or legislature may direct the commission, from time to time, to undertake additional research and policy analysis, assessments, or other special projects related to its mission.

Sec. 7. RCW 43.162.030 and 2007 c 232 s 7 are each amended to read as follows:

Creation of the (~~Washington state economic development~~) commission (~~shall~~) may not be construed to modify any authority or budgetary responsibility of the governor or the department of (~~community, trade, and economic development~~) commerce.

NEW SECTION. Sec. 8. A new section is added to chapter 43.162 RCW to read as follows:

(1) The Washington state economic development commission account is created in the state treasury. All receipts from gifts, grants, donations, sponsorships, or contributions under RCW 43.162.020 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the Washington state economic development commission only for purposes related to carrying out the mission, roles, and responsibilities of the commission.

(2) Whenever any money, from the federal government or from other sources, that 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 executive director must use the unanticipated receipts process as provided in RCW 43.79.270 to request authority to spend the money.

Sec. 9. RCW 43.84.092 and 2010 1st sp.s. c 30 s 20, 2010 1st sp s c 9 s 7, 2010 c 248 s 6, 2010 c 222 s 5, 2010 c 162 s 6, and 2010 c 145 s 11 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the

site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Passed by the Senate April 20, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 312

[Engrossed Substitute House Bill 1220]

INSURANCE RATE FILINGS

AN ACT Relating to regulating insurance rates; and amending RCW 48.02.120.

[1997]

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

Sec. 1. RCW 48.02.120 and 1985 c 264 s 2 are each amended to read as follows:

(1) The commissioner shall preserve in permanent form records of his or her proceedings, hearings, investigations, and examinations, and shall file such records in his or her office.

(2) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this code.

(3) Except as provided in subsection (4) of this section, actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition.

(4) For individual and small group health benefit plan rate filings submitted on or after July 1, 2011, subsection (3) of this section applies only to the numeric values of each small group rating factor used by a health carrier as authorized by RCW 48.21.045(3)(a), 48.44.023(3)(a), and 48.46.066(3)(a). Subsection (3) of this section may continue to apply for a period of one year from the date a new individual or small group product filing is submitted or until the next rate filing for the product, whichever occurs earlier, if the commissioner determines that the proposed rate filing is for a new product that is distinct and unique from any of the carrier's currently or previously offered health benefit plans. Carriers must make a written request for a product classification as a new product under this subsection and must receive subsequent written approval by the commissioner for this subsection to apply.

(5) Unless the commissioner has determined that a filing is for a new product pursuant to subsection (4) of this section, for all individual or small group health benefit rate filings submitted on or after July 1, 2011, the health carrier must submit part I rate increase summary and part II written explanation of the rate increase as set forth by the department of health and human services at the time of filing, and the commissioner must:

(a) Make each filing and the part I rate increase summary and part II written explanation of the rate increase available for public inspection on the tenth calendar day after the commissioner determines that the rate filing is complete and accepts the filing for review through the electronic rate and form filing system; and

(b) Prepare a standardized rate summary form, to explain his or her findings after the rate review process is completed. The commissioner's summary form must be included as part of the rate filing documentation and available to the public electronically.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 313

[Engrossed Substitute House Bill 1311]

HEALTH CARE—PUBLIC/PRIVATE COLLABORATIVE

AN ACT Relating to establishing a public/private collaborative to improve health care quality, cost-effectiveness, and outcomes in Washington state; amending RCW 70.250.010 and 70.250.030; adding a new section to chapter 70.250 RCW; creating a new section; and repealing RCW 70.250.020.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Efforts are needed across the health care system to improve the quality and cost-effectiveness of health care services provided in Washington state and to improve care outcomes for patients.

(b) Some health care services currently provided in Washington state present significant safety, efficacy, or cost-effectiveness concerns. Substantial variation in practice patterns or high utilization trends can be indicators of poor quality and potential waste in the health care system, without producing better care outcomes for patients.

(c) State purchased health care programs should partner with private health carriers, third-party purchasers, and health care providers in shared efforts to improve quality, health outcomes, and cost-effectiveness of care.

(2) The legislature declares that collaboration among state purchased health care programs, private health carriers, third-party purchasers, and health care providers to identify appropriate strategies that will increase the effectiveness of health care delivered in Washington state is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to efforts designed and implemented under this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature intends that the Robert Bree collaborative established in section 3 of this act provide a mechanism through which public and private health care purchasers, health carriers, and providers can work together to identify effective means to improve quality health outcomes and cost-effectiveness of care. It is not the intent of the legislature to mandate payment or coverage decisions by private health care purchasers or carriers.

Sec. 2. RCW 70.250.010 and 2009 c 258 s 1 are each amended to read as follows:

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

(1) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

(2) "Authority" means the Washington state health care authority.

(3) "Collaborative" means the Robert Bree collaborative established in section 3 of this act.

~~(4) "Payor" means ((public purchasers and)) carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.~~

~~((4) "Public purchaser" means the department of social and health services, the department of health, the department of labor and industries, the authority, and the Washington state health insurance pool))~~ (5) "Self-funded health plan" means an employer-sponsored health plan or Taft-Hartley plan that is not provided through a fully insured health carrier.

~~((5))~~ (6) "State purchased health care" has the same meaning as in RCW 41.05.011.

NEW SECTION. Sec. 3. A new section is added to chapter 70.250 RCW to read as follows:

(1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a collaborative, to be known as the Robert Bree collaborative. The collaborative shall identify health care services for which there are substantial variation in practice patterns or high utilization trends in Washington state, without producing better care outcomes for patients, that are indicators of poor quality and potential waste in the health care system. On an annual basis, the collaborative shall identify up to three health care services it will address.

(2) For each health care service identified, the collaborative shall:

(a) Analyze and identify evidence-based best practice approaches to improve quality and reduce variation in use of the service, including identification of guidelines or protocols applicable to the health care service. In evaluating guidelines, the collaborative should identify the highest quality guidelines based upon the most rigorous and transparent methods for identification, rating, and translation of evidence into practice recommendations.

(b) Identify data collection and reporting necessary to develop baseline health service utilization rates and to measure the impact of strategies adopted under this section. Methods for data collection and reporting should strive to minimize cost and administrative effort related to data collection and reporting wherever possible, including the use of existing data resources and nonfee-based tools for reporting.

(c) Identify strategies to increase use of the evidence-based best practice approaches identified under (a) of this subsection in both state purchased and privately purchased health care plans. Strategies considered should include, but are not limited to: Identifying goals for appropriate utilization rates and reduction in practice variation among providers; peer-to-peer consultation or second opinions; provider feedback reports; use of patient decision aids; incentives for appropriate use of health care services; centers of excellence or other provider qualification standards; quality improvement systems; and service utilization and outcomes reporting, including public reporting. In developing strategies, the collaborative should strongly consider related efforts of organizations such as the Puget Sound health alliance, the Washington state hospital association, the national quality forum, the joint commission on accreditation of health care organizations, the national committee for quality assurance, the foundation for health care quality, and, where appropriate, more focused quality improvement efforts, such as the Washington state perinatal advisory committee and the Washington state surgical care and outcomes

assessment program. The collaborative shall provide an opportunity for public comment on the strategies chosen before finalizing their recommendations.

(3) If the collaborative chooses a health care service for which there is substantial variation in practice patterns or a high or low utilization trend in Washington state, and a lack of evidence-based best practice approaches, it should consider strategies that will promote improved care outcomes, such as patient decision aids, provider feedback reports, centers of excellence or other provider qualification standards, and research to improve care quality and outcomes.

(4) The governor shall appoint twenty members of the collaborative, who must include:

(a) Two members, selected from health carriers or third-party administrators that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(b) One member, selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(c) One member, chosen from among three nominees submitted by the association of Washington health plans, representing national health carriers that operate in multiple states outside of the Pacific Northwest;

(d) Four physicians, selected from lists of nominees submitted by the Washington state medical association, as follows:

(i) Two physicians, one of whom must be a practicing primary care physician, representing large multispecialty clinics with fifty or more physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician; and

(ii) Two physicians, one of whom must be a practicing primary care physician, representing clinics with less than fifty physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician;

(e) One osteopathic physician, selected from a list of five nominees submitted by the Washington state osteopathic medical association;

(f) Two physicians representing the largest hospital-based physician systems in the state, selected from a list of five nominees submitted jointly by the Washington state medical association and the Washington state hospital association;

(g) Three members representing hospital systems, at least one of whom is responsible for quality, submitted from a list of six nominees from the Washington state hospital association;

(h) Three members, representing self-funded purchasers of health care services for employees;

(i) Two members, representing state purchased health care programs; and

(j) One member, representing the Puget Sound health alliance.

(5) The governor shall appoint the chair of the collaborative.

(6) The collaborative shall add members to its membership or establish clinical committees for each therapy under review by the collaborative for the purpose of acquiring clinical expertise needed to accomplish its responsibilities under this section and RCW 70.250.010 and 70.250.030. Membership of clinical committees should reflect clinical expertise in the area of health care services being addressed by the collaborative, including clinicians involved in related quality improvement or comparative effectiveness efforts, as well as nonphysician practitioners. Each clinical committee shall include at least two members of the specialty or subspecialty society most experienced with the health service identified for review.

(7) Permanent and ad hoc members of the collaborative or any of its committees may not have personal financial conflicts of interest that could substantially influence or bias their participation. If a collaborative or committee member has a personal financial conflict of interest with respect to a particular health care service being addressed by the collaborative, he or she shall disclose such an interest. The collaborative must determine whether the member should be recused from any deliberations or decisions related to that service.

(8) A person serving on the collaborative or any of its clinical committees shall be immune from civil liability, whether direct or derivative, for any decisions made in good faith while pursuing activities associated with the work of collaborative or any of its clinical committees.

(9) The guidelines or protocols identified under this section shall not be construed to establish the standard of care or duty of care owed by health care providers in any cause of action occurring as a result of health care.

(10) The collaborative shall actively solicit federal or private funds and in-kind contributions necessary to complete its work in a timely fashion. The collaborative shall not accept private funds if receipt of such funding could present a potential conflict of interest or bias in the collaborative's deliberations. Available state funds may be used to support the work of the collaborative when the collaborative has selected a health care service that is a high utilization or high-cost service in state purchased health care programs or the health care service is undergoing evaluation in one or more state purchased health care programs and coordination will reduce duplication of efforts. The collaborative shall not begin the work described in this section unless sufficient funds are received from private or federal resources, or available state funds.

(11) No member of the collaborative or its committees may be compensated for his or her service.

(12) The proceedings of the collaborative shall be open to the public and notice of meetings shall be provided at least twenty days prior to a meeting.

(13) The collaborative shall report to the administrator of the authority regarding the health services areas it has chosen and strategies proposed. The administrator shall review the strategies recommended in the report, giving strong consideration to the direction provided in section 1 of this act and this section. The administrator's review shall describe the outcomes of the review and any decisions related to adoption of the recommended strategies by state purchased health care programs. Following the administrator's review, the collaborative shall report to the legislature and the governor regarding chosen

health services, proposed strategies, the results of the administrator's review, and available information related to the impact of strategies adopted in the previous three years on the cost and quality of care provided in Washington state. The initial report must be submitted by November 15, 2011, with annual reports thereafter.

Sec. 4. RCW 70.250.030 and 2009 c 258 s 3 are each amended to read as follows:

(1) No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under (~~RCW 70.250.020~~) section 3 of this act.

(2) By January 1, 2012, and every January 1st thereafter, all state purchased health care programs must implement the evidence-based best practice guidelines or protocols and strategies identified under section 3 of this act, after the administrator, in consultation with participating agencies, has affirmatively reviewed and endorsed the recommendations. This requirement applies to health carriers, as defined in RCW 48.43.005 and to entities acting as third-party administrators that contract with state purchased health care programs to provide or administer health benefits for enrollees of those programs. If the collaborative fails to reach consensus within the time frames identified in this section and section 3 of this act, state purchased health care programs may pursue implementation of evidence-based strategies on their own initiative.

NEW SECTION. **Sec. 5.** RCW 70.250.020 (Work group—Members—Duties—Report—Expiration of work group) and 2009 c 258 s 2 are each repealed.

Passed by the House April 15, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 314

[Engrossed Substitute Senate Bill 5122]

INSURANCE COVERAGE—AFFORDABLE CARE ACT IMPLEMENTATION

AN ACT Relating to changes for implementation of the affordable care act in Washington state; amending RCW 48.20.435, 48.21.270, 48.43.530, 48.43.535, 48.44.215, 48.44.380, 48.46.325, 48.46.460, 48.20.025, 48.44.017, 48.46.062, 48.41.060, 48.41.080, 48.41.100, 48.41.140, and 48.21.157; reenacting and amending RCW 48.43.005; adding a new section to chapter 48.43 RCW; and providing an effective date.

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

Sec. 1. RCW 48.20.435 and 2007 c 259 s 19 are each amended to read as follows:

Any disability insurance contract that provides coverage for a subscriber's dependent must offer the option of covering any (~~unmarried~~) dependent under the age of (~~twenty-five~~) twenty-six.

Sec. 2. RCW 48.21.270 and 1984 c 190 s 4 are each amended to read as follows:

(1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions ~~((except))~~ for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible ~~((and a lifetime benefit maximum of two hundred fifty thousand dollars))~~ per person;

(b) A comprehensive medical plan with a five hundred dollar deductible ~~((and a lifetime benefit maximum of five hundred thousand dollars))~~ per person; and

(c) A basic medical plan with a one thousand dollar deductible ~~((and a lifetime maximum of seventy five thousand dollars))~~ per person.

(4) The insurance commissioner may revise the ~~((deductibles and lifetime benefit))~~ deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms.

Sec. 3. RCW 48.43.005 and 2010 c 292 s 1 are each reenacted and amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

~~((3))~~ (4) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

~~((4))~~ (5) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

~~((5))~~ (6) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

~~((6))~~ (7) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

~~((7))~~ (8) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

~~((8))~~ (9) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

~~((9))~~ (10) "Dependent" means, at a minimum, the enrollee's legal spouse and ~~((unmarried))~~ dependent children who qualify for coverage under the enrollee's health benefit plan.

~~((10))~~ (11) "Emergency medical condition" means ~~((the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy))~~ a

medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

~~((41))~~ (12) "Emergency services" means ~~((otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department))~~ a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

~~((42))~~ (13) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

~~((43))~~ (14) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((44))~~ (15) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(16) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(17) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

(18) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

~~((45))~~ (19) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24

RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

~~((16))~~ (20) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((17))~~ (21) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((18))~~ (22) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

~~((19))~~ (23) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((20))~~ (24) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

~~((21))~~ (25) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((22))~~ (26) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((23))~~ (27) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

~~((24))~~ (28) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

~~((25))~~ (29) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((26))~~ (30) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation,

injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 4. RCW 48.43.530 and 2000 c 5 s 10 are each amended to read as follows:

(1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, and for health plans that are not grandfathered health plans as approved by the United States department of health and human services or the United States department of labor.

(2) Each carrier must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written complaints in a timely and thorough manner.

(3) Each carrier must provide written notice to an enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility.

(4) Each carrier must process as an appeal an enrollee's written or oral request that the carrier reconsider: (a) Its resolution of a complaint made by an enrollee; or (b) its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. A carrier must not require that an enrollee file a complaint prior to seeking appeal of a decision under (b) of this subsection.

(5) To process an appeal, each carrier must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee's provider or the carrier's medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under RCW 48.43.535.

(6) Written notice required by subsection (3) of this section must explain:

(a) The carrier's decision and the supporting coverage or clinical reasons; and

(b) The carrier's appeal process, including information, as appropriate, about how to exercise the enrollee's rights to obtain a second opinion, and how to continue receiving services as provided in this section.

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under RCW 48.43.535 affirms the carrier's decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier must provide a clear explanation of the grievance process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors.

(9) Each carrier must ensure that the grievance process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

Sec. 5. RCW 48.43.535 and 2000 c 5 s 11 are each amended to read as follows:

(1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee.

(2) An enrollee may seek review by a certified independent review organization of a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the carrier's grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in RCW 48.43.530, without good cause and without reaching a decision.

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute, and that any approved independent review organization does not have a conflict of interest that will influence its independence.

(4) Carriers must provide to the appropriate certified independent review organization, not later than the third business day after the date the carrier receives a request for review, a copy of:

(a) Any medical records of the enrollee that are relevant to the review;

(b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;

(c) Any documentation and written information submitted to the carrier in support of the appeal; and

(d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

(5) Enrollees must be provided with at least five business days to submit to the independent review organization in writing additional information that the independent review organization must consider when conducting the external review. The independent review organization must forward any additional information submitted by an enrollee to the plan or carrier within one business day of receipt by the independent review organization.

(6) The medical reviewers from a certified independent review organization will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee. The medical reviewers' determinations must be based upon their expert medical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of Washington. Except as provided in this subsection, the certified independent review organization must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement. Medical reviewers may override the health plan's medical necessity or appropriateness standards if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

~~((6))~~ (7) Once a request for an independent review determination has been made, the independent review organization must proceed to a final determination, unless requested otherwise by both the carrier and the enrollee or the enrollee's representative.

~~((7))~~ (a) An enrollee or carrier may request an expedited external review if the adverse benefit determination or internal adverse benefit determination concerns an admission, availability of care, continued stay, or health care service for which the claimant received emergency services but has not been discharged from a facility; or involves a medical condition for which the standard external review time frame of forty-five days would seriously jeopardize the life or health of the enrollee or jeopardize the enrollee's ability to regain maximum function. The independent review organization must make its decision to uphold or reverse the adverse benefit determination or final internal adverse benefit determination and notify the enrollee and the carrier or health plan of the determination as expeditiously as possible but within not more than seventy-two hours after the receipt of the request for expedited external review. If the notice is not in writing, the independent review organization must provide written confirmation of the decision within forty-eight hours after the date of the notice of the decision.

(b) For claims involving experimental or investigational treatments, the internal review organization must ensure that adequate clinical and scientific experience and protocols are taken into account as part of the external review process.

(8) Carriers must timely implement the certified independent review organization's determination, and must pay the certified independent review organization's charges.

~~((8))~~ (9) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

~~((9))~~ (10) Each certified independent review organization must maintain written records and make them available upon request to the commissioner.

(11) A certified independent review organization may notify the office of the insurance commissioner if, based upon its review of disputes under this section, it finds a pattern of substandard or egregious conduct by a carrier.

~~((10))~~ (12)(a) The commissioner shall adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners.

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules.

Sec. 6. RCW 48.44.215 and 2007 c 259 s 21 are each amended to read as follows:

(1) Any individual health care service plan contract that provides coverage for a subscriber's dependent must offer the option of covering any ~~((unmarried))~~ dependent under the age of ~~((twenty-five))~~ twenty-six.

(2) Any group health care service plan contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any ~~((unmarried))~~ dependent under the age of ~~((twenty-five))~~ twenty-six.

Sec. 7. RCW 48.44.380 and 1984 c 190 s 7 are each amended to read as follows:

(1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions ~~((except))~~ for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible ~~((and a lifetime benefit maximum of two hundred fifty thousand dollars))~~ per person;

(b) A comprehensive medical plan with a five hundred dollar deductible ~~((and a lifetime benefit maximum of five hundred thousand dollars))~~ per person; and

(c) A basic medical plan with a one thousand dollar deductible ~~((and a lifetime maximum of seventy-five thousand dollars))~~ per person.

(4) The insurance commissioner may revise the ~~((deductibles and lifetime benefit))~~ deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms.

Sec. 8. RCW 48.46.325 and 2007 c 259 s 22 are each amended to read as follows:

(1) Any individual health maintenance agreement that provides coverage for a subscriber's dependent must offer the option of covering any ~~((unmarried))~~ dependent under the age of ~~((twenty-five))~~ twenty-six.

(2) Any group health maintenance agreement that provides coverage for a participating member's dependent must offer each participating member the option of covering any ~~((unmarried))~~ dependent under the age of ~~((twenty-five))~~ twenty-six.

Sec. 9. RCW 48.46.460 and 1984 c 190 s 10 are each amended to read as follows:

(1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions ~~((except))~~ for an applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments, except for preventive service benefits as defined in 45 C.F.R. 147.130 (2010), implementing sections 2701 through 2763, 2791, and 2792 of the public health service act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms.

Sec. 10. RCW 48.20.025 and 2008 c 303 s 4 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for an insurer means the percentage of the total number of applicants for individual health benefit plans received by that insurer in the aggregate in the applicable year which are not accepted for enrollment by that insurer based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer must file supporting documentation of its method of determining the rates charged for its individual health benefit plans. At a minimum, the insurer must provide the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.

~~((3) By the last day of May each year any insurer issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the insurer's actual declination rate in the preceding year, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.~~

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy Six Percent (76%)
Eight Percent (8%) or more	Seventy Seven Percent (77%))

Sec. 11. RCW 48.44.017 and 2008 c 303 s 5 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or

paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health care service contractor means the percentage of the total number of applicants for individual health benefit plans received by that health care service contractor in the aggregate in the applicable year which are not accepted for enrollment by that health care service contractor based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recouplements less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor must file supporting documentation of its method of determining the rates charged for its individual contracts. At a minimum, the health care service contractor must provide the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

~~((3) By the last day of May each year any health care service contractor issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in this state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner,~~

~~that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health care service contractor's actual declination rate in the preceding year, minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201.~~

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy-Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy-Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy-Six Percent (76%)
Eight Percent (8%) or more	Seventy-Seven Percent (77%))

Sec. 12. RCW 48.46.062 and 2008 c 303 s 6 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health maintenance organization means the percentage of the total number of applicants for individual health benefit plans received by that health maintenance organization in the aggregate in the applicable year which are not accepted for enrollment by that health maintenance organization based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization must file supporting documentation of its method of determining the rates charged for its individual agreements. At a minimum, the health maintenance organization must provide the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

~~((3) By the last day of May each year any health maintenance organization issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for~~

~~the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health maintenance organization's actual declination rate in the preceding year, minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201.~~

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy-Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy-Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy-Six Percent (76%)
Eight Percent (8%) or more	Seventy-Seven Percent (77%)

Sec. 13. RCW 48.41.060 and 2009 c 555 s 2 are each amended to read as follows:

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every thirty-six months unless at the time when certification is required the pool will be discontinued before the end of the succeeding thirty-six month period. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not

preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a)(i) and (ii);

(i) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW.

Sec. 14. RCW 48.41.080 and 2000 c 79 s 10 are each amended to read as follows:

The board shall select an administrator through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

- (a) The administrator's proven ability to handle health coverage;
- (b) The efficiency of the administrator's claim-paying procedures;
- (c) An estimate of the total charges for administering the plan; and
- (d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period, unless at the time required for submission of bids pursuant to this subsection to the pool will be discontinued before the end of the succeeding thirty-six month period.

(3) The administrator shall perform such duties as may be assigned by the board including:

- (a) Administering eligibility and administrative claim payment functions relating to the pool;
- (b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;
- (c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:
 - (i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;
 - (ii) Taking steps necessary to offer and administer managed care benefit plans; and
 - (iii) Evaluating the eligibility of each claim for payment by the pool;
- (d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;
- (e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services.

Sec. 15. RCW 48.41.100 and 2009 c 555 s 3 are each amended to read as follows:

(1)(a) The following persons who are residents of this state are eligible for pool coverage:

- (i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW

48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool;

(iv) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

~~(b) ((Any person on whose behalf the pool has paid out two million dollars in benefits;~~

~~(e))~~ Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

~~((d))~~ (c) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(iii) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (ii), or (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007.

Sec. 16. RCW 48.41.140 and 2000 c 79 s 16 are each amended to read as follows:

(1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and

treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the person in whose name the policy is issued assumes financial responsibility for the medical expenses of the child. For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, (~~unmarried~~) person shall terminate when the person becomes (~~nineteen~~) twenty-six years of age: PROVIDED, That coverage of such person shall not terminate at age (~~nineteen~~) twenty-six while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policyholder within thirty-one days of the dependent's attainment of age (~~nineteen~~) twenty-six and subsequently as may be required by the pool but not more frequently than annually after the two-year period following the dependent's attainment of age (~~nineteen~~) twenty-six.

Sec. 17. RCW 48.21.157 and 2007 c 259 s 20 are each amended to read as follows:

Any group disability insurance contract or blanket disability insurance contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any (~~unmarried~~) dependent under the age of (~~twenty-five~~) twenty-six.

NEW SECTION. Sec. 18. A new section is added to chapter 48.43 RCW to read as follows:

Health care sharing ministries are not health carriers as defined in RCW 48.43.005 or insurers as defined in RCW 48.01.050. For purposes of this section, "health care sharing ministry" has the same meaning as in 26 U.S.C. Sec. 5000A.

NEW SECTION. Sec. 19. Sections 10 through 12 of this act take effect January 1, 2012.

Passed by the Senate April 14, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 315

[Engrossed Substitute Senate Bill 5371]

HEALTH INSURANCE—PERSONS UNDER NINETEEN

AN ACT Relating to guaranteed issue health insurance for persons under age nineteen; amending RCW 48.43.012 and 48.41.100; reenacting and amending RCW 48.43.005 and 48.41.110; adding a new section to chapter 48.43 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The federal patient protection and affordable care act (P.L. 111-148) prohibits insurance carriers from applying preexisting condition limitations for persons under age nineteen, beginning on or after September 23, 2010. The guidance from the United States department of health and human services provides some direction for the implementation of the new policy requirement, and the office of the insurance commissioner further clarified open enrollment requirements to help prevent disruption in the individual health insurance marketplace. It is the intent of this act to:

(1) Maintain access to individual plan options for persons under age nineteen; and

(2) Provide clarity for the establishment of open enrollment and special open enrollment periods that balance access to guaranteed issue coverage with efforts that protect market stability.

Sec. 2. RCW 48.43.005 and 2010 c 292 s 1 are each reenacted and amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

(3) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

~~((3))~~ (4) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

~~((4))~~ (5) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

~~((5))~~ (6) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a

minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

~~((6))~~ (7) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

~~((7))~~ (8) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

~~((8))~~ (9) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

~~((9))~~ (10) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

~~((10))~~ (11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

~~((11))~~ (12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

~~((12))~~ (13) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

~~((13))~~ (14) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((14))~~ (15) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or

staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

~~((45))~~ (16) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

~~((46))~~ (17) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((47))~~ (18) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((48))~~ (19) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

~~((49))~~ (20) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(1) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((20))~~ (21) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

~~((21))~~ (22) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(23) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((22))~~ (24) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((23))~~ (25) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

~~((24))~~ (26) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual

or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

~~((25))~~ (27) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(28) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

(29) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((26))~~ (30) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 3. RCW 48.43.012 and 2001 c 196 s 6 are each amended to read as follows:

(1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in RCW 48.43.018.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents.

(6) For any person under age nineteen applying for coverage as allowed by section 4(1) of this act or enrolled in a health benefit plan subject to sections 1201 and 10103 of the patient protection and affordable care act (P.L. 111-148) that is not a grandfathered health plan in the individual market, a carrier must not impose a preexisting condition exclusion or waiting period or other limitations on benefits or enrollment due to a preexisting condition.

NEW SECTION. Sec. 4. A new section is added to chapter 48.43 RCW to read as follows:

(1) The commissioner shall adopt rules establishing and implementing requirements for the open enrollment periods and special enrollment periods that carriers must follow for individual health benefit plans and enrollment of persons under age nineteen.

(2) The commissioner shall monitor the sale of individual health benefit plans and if a carrier refuses to sell guaranteed issue policies to persons under age nineteen in compliance with rules adopted by the commissioner pursuant to subsection (1) of this section, the commissioner may levy fines or suspend or revoke a certificate of authority as provided in chapter 48.05 RCW.

Sec. 5. RCW 48.41.100 and 2009 c 555 s 3 are each amended to read as follows:

(1)(a) The following persons who are residents of this state are eligible for pool coverage:

(i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool;

(iv) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; ~~((and))~~

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter

48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(vi) Any person under the age of nineteen who does not have access to individual plan open enrollment or special enrollment, as defined in RCW 48.43.005, or the federal preexisting condition insurance pool, at the time of application to the pool is eligible for the pool coverage.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(iii) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the

standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (ii), or (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007.

Sec. 6. RCW 48.41.110 and 2007 c 259 s 26 and 2007 c 8 s 5 are each reenacted and amended to read as follows:

(1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. The pool may incorporate managed care features into existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of pool policies in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policies issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of covered illnesses, injuries, and conditions. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under a pool policy.

(4) The pool shall offer at least two policies, one of which will be a comprehensive policy that must comply with RCW 48.41.120 and must at a minimum include the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, including no less than a total of one hundred eighty inpatient days in a calendar year, and no less than thirty days inpatient care for alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) No less than twenty outpatient professional visits for the diagnosis or treatment of alcohol, drug, or chemical dependency or abuse rendered during a calendar year by a state-certified chemical dependency program approved under chapter 70.96A RCW, or by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not less than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery including at least the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury;

(r) Mental health services pursuant to RCW 48.41.220; and

(s) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(5) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(6) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. No limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(7)(a) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit

coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (8) of this section.

(b) The pool shall not impose any preexisting condition waiting period for any person under the age of nineteen.

(8)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(9) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

(10) The pool shall contract with organizations that provide care management that has been demonstrated to be effective and shall encourage enrollees who are eligible for care management services to participate. The pool may encourage the use of shared decision making and certified decision aids for preference-sensitive care areas.

NEW SECTION. Sec. 7. Sections 5 and 6 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.

Passed by the Senate April 18, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 316

[Substitute Senate Bill 5394]

PRIMARY CARE HEALTH HOMES—CHRONIC CARE MANAGEMENT

AN ACT Relating to primary care health homes and chronic care management; amending RCW 43.70.533 and 70.47.100; reenacting and amending RCW 74.09.010 and 74.09.522; adding a new section to chapter 74.09 RCW; and adding new sections to chapter 41.05 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 74.09 RCW to read as follows:

The legislature finds that:

(1) Health care costs are growing rapidly, exceeding the consumer price index year after year. Consequently, state health programs are capturing a growing share of the state budget, even as state revenues have declined. Sustaining these critical health programs will require actions to effectively contain health care cost increases in the future; and

(2) The primary care health home model has been demonstrated to successfully constrain costs, while improving quality of care. Chronic care management, occurring within a primary care health home, has been shown to be especially effective at reducing costs and improving quality. However, broad adoption of these models has been impeded by a fee-for-service system that reimburses volume of services and does not adequately support important primary care health home services, such as case management and patient outreach. Furthermore, successful implementation will require a broad adoption effort by private and public payers, in coordination with providers.

Therefore the legislature intends to promote the adoption of primary care health homes for children and adults and, within them, advance the practice of chronic care management to improve health outcomes and reduce unnecessary costs. To facilitate the best coordination and patient care, primary care health homes are encouraged to collaborate with other providers currently outside the medical insurance model. Successful chronic care management for persons receiving long-term care services in addition to medical care will require close coordination between primary care providers, long-term care workers, and other long-term care service providers, including area agencies on aging. Primary care providers also should consider oral health coordination through collaboration with dental providers and, when possible, delivery of oral health prevention services. The legislature also intends that the methods and approach of the primary care health home become part of basic primary care medical education.

Sec. 2. RCW 74.09.010 and 2010 1st sp.s. c 8 s 28 are each reenacted and amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

~~(2) ("Committee" means the children's health services committee created in section 3 of this act.~~

~~(3))~~ "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(3) "Chronic condition" means a prolonged condition and includes, but is not limited to:

(a) A mental health condition;

(b) A substance use disorder;

(c) Asthma;

(d) Diabetes;

(e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(4) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements ~~(to fulfill the requirements of RCW 74.09.415 through 74.09.435).~~

~~((4))~~ (5) "Department" means the department of social and health services.

~~((5))~~ (6) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

~~((6))~~ (7) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

~~((7))~~ (8) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. Primary care health home services shall include those services defined as health home services in 42 U.S.C. Sec. 1396w-4 and, in addition, may include, but are not limited to:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

~~(9)~~ "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

~~((8))~~ ~~(10)~~ "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

~~((9))~~ ~~(11)~~ "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

~~((10))~~ ~~(12)~~ "Medical care services" means the limited scope of care financed by state funds and provided to disability lifeline benefits recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

~~((11))~~ ~~(13)~~ "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dieticians, social workers, behavioral and mental health providers including substance use disorder prevention and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

~~(14)~~ "Nursing home" means nursing home as defined in RCW 18.51.010.

~~((12))~~ ~~(15)~~ "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

~~((13))~~ ~~(16)~~ "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopath, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

~~(17)~~ "Secretary" means the secretary of social and health services.

Sec. 3. RCW 43.70.533 and 2007 c 259 s 5 are each amended to read as follows:

(1) The department shall conduct a program of training and technical assistance regarding care of people with chronic conditions for providers of primary care. The program shall emphasize evidence-based high quality preventive and chronic disease care and shall collaborate with the health care authority to promote the adoption of primary care health homes established under this act. The department may designate one or more chronic conditions to be the subject of the program.

(2) The training and technical assistance program shall include the following elements:

(a) Clinical information systems and sharing and organization of patient data;

(b) Decision support to promote evidence-based care;

(c) Clinical delivery system design;

(d) Support for patients managing their own conditions; and

(e) Identification and use of community resources that are available in the community for patients and their families.

(3) In selecting primary care providers to participate in the program, the department shall consider the number and type of patients with chronic conditions the provider serves, and the provider's participation in the medicaid program, the basic health plan, and health plans offered through the public employees' benefits board.

(4) For the purposes of this section, "health home" and "primary care provider" have the same meaning as in RCW 74.09.010.

Sec. 4. RCW 74.09.522 and 1997 c 59 s 15 and 1997 c 34 s 1 are each reenacted and amended to read as follows:

(1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(2) The department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the department by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the department under federal demonstration

waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the department shall adopt a uniform procedure to ~~((negotiate and))~~ enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, 2012, including:

(A) Standards regarding the quality of services to be provided; ~~((and))~~

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (E) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services; ~~((and))~~

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The department must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The department shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care

delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the department in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the department to the extent that minimum contracting requirements defined by the department are met, at payment rates that enable the department to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the department, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The department shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the department to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the department and contract bidders or the department and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document. In designing such procedures, the department shall give strong consideration to the negotiation and dispute resolution processes used by the Washington state health care authority in its managed health care contracting activities.

(6) The department may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

Sec. 5. RCW 70.47.100 and 2009 c 568 s 5 are each amended to read as follows:

(1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5)(a) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees,

nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7) The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140.

NEW SECTION. Sec. 6. A new section is added to chapter 41.05 RCW to read as follows:

(1) Effective January 1, 2013, the authority must contract with all of the public employees benefits board managed care plans and the self-insured plan or plans to include provider reimbursement methods that incentivize chronic care management within health homes resulting in reduced emergency department and inpatient use.

(2) Health home services contracted for under this section may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(3) For the purposes of this section, "chronic care management," and "health home" have the same meaning as in RCW 74.09.010.

(4) Contracts with fully insured plans and with any third-party administrator for the self-funded plan that include the items in subsection (1) of this section

must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(5) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in subsection (1) of this section beyond the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions.

NEW SECTION. Sec. 7. A new section is added to chapter 41.05 RCW to read as follows:

The authority shall coordinate a discussion with carriers to learn from successful chronic care management models and develop principles for effective reimbursement methods to align incentives in support of patient centered chronic care health homes. The authority shall submit a report to the appropriate committees of the legislature by December 1, 2012, describing the principles developed from the discussion and any steps taken by the public employees benefits board or carriers in Washington state to implement the principles through their payment methodologies.

Passed by the Senate April 18, 2011.

Passed by the House April 7, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 317

[Substitute Senate Bill 5445]

HEALTH BENEFIT EXCHANGE

AN ACT Relating to the creation of a health benefit exchange; adding a new chapter to Title 43 RCW; 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 affordable care act requires the establishment of health benefit exchanges. The legislature intends to establish an exchange, including a governance structure. There are many policy decisions associated with establishing an exchange that need to be made that will take a great deal of effort and expertise. It is therefore the intent of the legislature to establish a process through which these policy decisions can be made by the legislature and the governor by the deadline established in the affordable care act.

(2) The exchange is intended to:

(a) Increase access to quality affordable health care coverage, reduce the number of uninsured persons in Washington state, and increase the availability of health care coverage through the private health insurance market to qualified individuals and small employers;

(b) Provide consumer choice and portability of health insurance, regardless of employment status;

(c) Create an organized, transparent, and accountable health insurance marketplace for Washingtonians to purchase affordable, quality health care coverage, to claim available federal refundable premium tax credits and cost-

sharing subsidies, and to meet the personal responsibility requirements for minimum essential coverage as provided under the federal affordable care act;

(d) Promote consumer literacy and empower consumers to compare plans and make informed decisions about their health care and coverage;

(e) Effectively and efficiently administer health care subsidies and determination of eligibility for participation in publicly subsidized health care programs, including the exchange;

(f) Create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts;

(g) Operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation;

(h) Recognize the need for a private health insurance market to exist outside of the exchange; and

(i) Recognize that the regulation of the health insurance market, both inside and outside the exchange, should continue to be performed by the insurance commissioner.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.

(3) "Board" means the governing board established in section 3 of this act.

(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.

(5) "Exchange" means the Washington health benefit exchange established in section 3 of this act.

NEW SECTION. Sec. 3. (1) The Washington health benefit exchange is established and constitutes a public-private partnership separate and distinct from the state, exercising functions delineated in this act. By January 1, 2014, the exchange shall operate consistent with the affordable care act subject to statutory authorization. The exchange shall have a governing board consisting of persons with expertise in the Washington health care system and private and public health care coverage. The initial membership of the board shall be appointed as follows:

(a) By October 1, 2011, each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus submitting the same nominee.

(i) The nominations from the largest caucus in the house of representatives must include at least one employee benefit specialist;

(ii) The nominations from the second largest caucus in the house of representatives must include at least one health economist or actuary;

(iii) The nominations from the largest caucus in the senate must include at least one representative of health consumer advocates;

(iv) The nominations from the second largest caucus in the senate must include at least one representative of small business;

(v) The remaining nominees must have demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(b) By December 15, 2011, the governor shall appoint two members from each list submitted by the caucuses under (a) of this subsection. The appointments made under this subsection (1)(b) must include at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates. The remaining four members must have a demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(c) By December 15, 2011, the governor shall appoint a ninth member to serve as chair. The chair may not be an employee of the state or its political subdivisions. The chair shall serve as a nonvoting member except in the case of a tie.

(d) The following members shall serve as nonvoting, ex officio members of the board:

(i) The insurance commissioner or his or her designee; and

(ii) The administrator of the health care authority, or his or her designee.

(2) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(3) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.

(4) No board member may be appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. A board member who develops such a conflict of interest shall resign or be removed from the board.

(5) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are at the call of the chair.

(6) The exchange and the board are subject only to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public

records act, and not to any other law or regulation generally applicable to state agencies. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange.

(b) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in this act.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this act. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations.

(9) In recognition of the government-to-government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission.

NEW SECTION. Sec. 4. (1) The exchange may, consistent with the purposes of this chapter: (a) Sue and be sued in its own name; (b) make and execute agreements, contracts, and other instruments, with any public or private person or entity; (c) employ, contract with, or engage personnel; (d) pay administrative costs; and (e) accept grants, donations, loans of funds, and contributions in money, services, materials or otherwise, from the United States or any of its agencies, from the state of Washington and its agencies or from any other source, and use or expend those moneys, services, materials, or other contributions.

(2) The powers and duties of the exchange and the board are limited to those necessary to apply for and administer grants, establish information technology infrastructure, and undertake additional administrative functions necessary to begin operation of the exchange by January 1, 2014. Any actions relating to substantive issues included in section 5 of this act must be consistent with statutory direction on those issues.

NEW SECTION. Sec. 5. (1) In collaboration with the joint select committee on health reform implementation, the authority shall:

(a) Apply for and implement grants under the affordable care act. Whenever possible, grant applications shall allow for the possibility of partially funding the activities of the joint select committee on health reform implementation;

(b) Develop and submit to the federal department of health and human services:

(i) A complete budget for the development and operation of an exchange through 2014;

(ii) An initial plan discussing the means to achieve financial sustainability of the exchange by 2015;

(iii) A plan outlining steps to prevent fraud, waste, and abuse; and
(iv) A plan describing how capacity for providing assistance to individuals and small businesses in the state will be created, continued, or expanded, including provision for a call center.

(2) Consistent with the work plan developed in subsection (3) of this section, but in no case later than January 1, 2012, the authority, in collaboration with the joint select committee on health reform implementation and the board, shall develop a broad range of options for operating the exchange and report the options to the governor and the legislature on an ongoing basis. The report must include analysis and recommendations on the following:

(a) The operations and administration of the exchange, including:

(i) The goals and principles of the exchange;

(ii) The creation and implementation of a single state-administered exchange for all geographic areas in the state that operates as the exchange for both the individual and small employer markets by January 1, 2014;

(iii) Whether and under what circumstances the state should consider establishment of, or participation in, a regionally administered multistate exchange;

(iv) Whether the role of an exchange includes serving as an aggregator of funds that comprise the premium for a health plan offered through the exchange;

(v) The administrative, fiduciary, accounting, contracting, and other services to be provided by the exchange;

(vi) Coordination of the exchange with other state programs;

(vii) Development of sustainable funding for administration of the exchange as of January 1, 2015; and

(viii) Recognizing the need for expedience in determining the structure of needed information technology, the necessary information technology to support implementation of exchange activities;

(b) Whether to adopt and implement a federal basic health plan option as authorized in the affordable care act, whether the federal basic health plan option should be administered by the entity that administers the exchange or by a state agency, and whether the federal basic health plan option should merge risk pools for rating with any portion of the state's medicaid program;

(c) Individual and small group market impacts, including whether to:

(i) Merge the risk pools for rating the individual and small group markets in the exchange and the private health insurance markets; and

(ii) Increase the small group market to firms with up to one hundred employees;

(d) Creation of uniform requirements, standards, and criteria for the creation of qualified health plans offered through the exchange, including promoting participation by carriers and enrollees in the exchange to a level sufficient to provide sustainable funding for the exchange;

(e) Certifying, selecting, and facilitating the offer of individual and small group plans through an exchange, to include designation of qualified health plans and the levels of coverage for the plans;

(f) The role and services provided by producers and navigators, including the option to use private insurance market brokers as navigators;

(g) Effective implementation of risk management methods, including: Reinsurance, risk corridors, risk adjustment, to include the entity designated to

operate reinsurance and risk adjustment, and the continuing role of the Washington state health insurance pool;

(h) Participation in innovative efforts to contain costs in Washington's markets for public and private health care coverage;

(i) Providing federal refundable premium tax credits and reduced cost-sharing subsidies through the exchange, including the processes and entity responsible for determining eligibility to participate in the exchange and the cost-sharing subsidies provided through the exchange;

(j) The staff, resources, and revenues necessary to operate and administer an exchange for the first two years of operation;

(k) The extent and circumstances under which benefits for spiritual care services that are deductible under section 213(d) of the internal revenue code as of January 1, 2010, will be made available under the exchange; and

(l) Any other areas identified by the joint select committee on health reform implementation.

(3) In collaboration with the joint select committee on health reform implementation, the authority shall develop a work plan for the development of options under subsection (2) of this section in discrete, prioritized stages.

(4) The authority and the board shall consult with the commissioner, the joint select committee on health reform implementation, and stakeholders relevant to carrying out the activities required under this section, including: (a) Educated health care consumers who are enrolled in commercial health insurance coverage and publicly subsidized health care programs; (b) individuals and entities with experience in facilitating enrollment in health insurance coverage, including health carriers, producers, and navigators; (c) representatives of small businesses, employees of small businesses, and self-employed individuals; (d) advocates for enrolling hard to reach populations and populations enrolled in publicly subsidized health care programs; (e) facilities and providers of health care; (f) representatives of publicly subsidized health care programs; and (g) members in good standing of the American academy of actuaries.

(5) Beginning March 15, 2012, the exchange shall be responsible for the duties of the authority under this section. Prior to March 15, 2012, the board may make independent recommendations regarding the options developed under subsection (2) of this section to the governor and the legislature.

NEW SECTION. Sec. 6. (1) The authority may enter into:

(a) Information sharing agreements with federal and state agencies and other state exchanges to carry out the provisions of this act: PROVIDED, That such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations; and

(b) Interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, the department of health, and any other state agencies necessary to implement this act.

(2) To the extent funding is available, the authority shall:

(a) Provide staff and resources to implement this act;

(b) Manage and administer the grant and other funds; and

(c) Expend funds specifically appropriated by the legislature to implement the provisions of this act.

(3) Beginning March 15, 2012, the board shall:

- (a) Be responsible for the duties imposed on the authority under this section;
and
(b) Have the powers granted to the authority under this section.

NEW SECTION. Sec. 7. The health benefit exchange account is created in the custody of the state treasurer. All receipts from federal grants received under the affordable care act shall be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants. Until March 15, 2012, only the administrator of the health care authority, or his or her designee, may authorize expenditures from the account. Beginning March 15, 2012, only the board of the Washington health benefit exchange may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 8. Sections 1 through 6 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 9. 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, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed by the Senate April 18, 2011.

Passed by the House April 11, 2011.

Approved by the Governor May 11, 2011.

Filed in Office of Secretary of State May 11, 2011.

CHAPTER 318

[Engrossed Substitute Senate Bill 5253]

TAX INCREMENT FINANCING—LOCAL INFRASTRUCTURE PROJECT AREAS

AN ACT Relating to tax increment financing for landscape conservation and local infrastructure; amending RCW 36.70A.080; adding a new chapter to Title 39 RCW; and creating a new section.

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

PART I FINDINGS

NEW SECTION. Sec. 101. FINDINGS. (1) Recognizing that uncoordinated and poorly planned growth poses a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state, the legislature passed the growth management act, chapter 36.70A RCW. The planning goals adopted through the growth management act encourage development in urban areas where public facilities and services exist or can be provided efficiently, conservation of productive forest and agricultural lands, and a reduction of sprawl.

(2) Under RCW 36.70A.090 and 43.362.005 the legislature has encouraged:

(a) The use of innovative land use management techniques, including the transfer of development rights, to meet growth management goals; and

(b) The creation of a regional transfer of development rights marketplace in the central Puget Sound to assist in conserving agricultural and forest land, as well as other lands of state or regional priority.

(3) The legislature finds that:

(a) Local governments are in need of additional resources to provide public infrastructure to meet the needs of a growing population, and that public infrastructure is fundamental to community health, safety, and economic vitality. Investment in public infrastructure in growing urban areas supports growth management goals, encourages the redevelopment of underutilized or blighted urban areas, stimulates business activity and helps create jobs, lowers the cost of housing, promotes efficient land use, and improves residents' quality of life;

(b) Transferring development rights from agricultural and forest lands to urban areas where public facilities and services exist or can be provided efficiently and cost-effectively will ensure vibrant, economically viable communities. Directing growth to communities where people can live close to where they work or have access to transportation choices will also advance state goals regarding climate change by reducing vehicle miles traveled and by reducing fuel consumption and emissions that contribute to climate change. Directing growth to these communities will further help avoid the impacts of storm water runoff to Puget Sound by avoiding impervious surfaces associated with development in watershed uplands;

(c) A transfer of development rights marketplace is particularly appropriate for conserving agricultural and forest land of long-term commercial significance. Transferring the development rights from these lands of statewide importance to cities will help achieve a specific goal of the growth management act by keeping them in farming and forestry, thereby helping ensure these remain viable industries in counties experiencing population growth. Transferring growth from agricultural and forest land of long-term commercial significance will also reduce costs to the counties that otherwise would be responsible for the provision of infrastructure and services for development on these lands, which are generally further from existing infrastructure and services; and

(d) The state and its residents benefit from investment in public infrastructure that is associated with urban growth facilitated by the transfer of development from agricultural and forest lands of long-term commercial significance. These activities advance multiple state growth management goals and benefit the state and local economies. It is in the public interest to enable local governments to finance such infrastructure investments and to incentivize development right transfers in the central Puget Sound through this chapter.

PART II DEFINITIONS

NEW SECTION. Sec. 201. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(2) "Eligible county" means any county that borders Puget Sound, that has a population of six hundred thousand or more, and that has an established program for transfer of development rights.

(3) "Employment" means total employment in a county or city, as applicable, estimated by the office of financial management.

(4) "Exchange rate" means an increment of development beyond what base zoning allows that is assigned to a development right by a sponsoring city for use in a receiving area.

(5) "Local infrastructure project area" means the geographic area identified by a sponsoring city under section 601 of this act.

(6) "Local infrastructure project financing" means the use of local property tax allocation revenue distributed to the sponsoring city to pay or finance public improvement costs within the local infrastructure project area in accordance with section 701 of this act.

(7) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure project financing.

(8) "Participating taxing district" means a taxing district that:

(a) Has a local infrastructure project area wholly or partially within the taxing district's geographic boundaries; and

(b) Levies, or has levied on behalf of the taxing district, regular property taxes as defined in this section.

(9) "Population" means the population of a city or county, as applicable, estimated by the office of financial management.

(10) "Property tax allocation revenue base value" means the assessed value of real property located within a local infrastructure project area, less the property tax allocation revenue value.

(11)(a)(i) "Property tax allocation revenue value" means an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of real property in a local infrastructure project area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the local infrastructure project area is created by the sponsoring city.

(ii) Increases in the assessed value of real property resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a local infrastructure project area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(12)(a) "Public improvements" means:

(i) Infrastructure improvements within the local infrastructure project area that include:

(A) Street, road, bridge, and rail construction and maintenance;

(B) Water and sewer system construction and improvements;

(C) Sidewalks, streetlights, landscaping, and streetscaping;

(D) Parking, terminal, and dock facilities;

(E) Park and ride facilities of a transit authority and other facilities that support transportation efficient development;

(F) Park facilities, recreational areas, bicycle paths, and environmental remediation;

(G) Storm water and drainage management systems;

(H) Electric, gas, fiber, and other utility infrastructures; and

(ii) Expenditures for facilities and improvements that support affordable housing;

(iii) Providing maintenance and security for common or public areas in the local infrastructure project area; or

(iv) Historic preservation activities authorized under RCW 35.21.395.

(b) Public improvements do not include the acquisition by a sponsoring city of transferable development rights.

(13) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(14)(a) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (i) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments

of principal and interest on general indebtedness; (ii) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and (iii) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose.

(b) "Regular property taxes" do not include:

(i) Excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043; and

(ii) Property taxes that are specifically excluded through an interlocal agreement between the sponsoring local government and a participating taxing district as set forth in RCW 39.104.060(3).

(15) "Receiving areas," for purposes of this chapter, are those designated lands within local infrastructure project areas in which transferable development rights from sending areas may be used.

(16) "Receiving city" means any incorporated city with population plus employment equal to twenty-two thousand five hundred or greater within an eligible county.

(17) "Receiving city allocated share" means the total number of transferable development rights from agricultural and forest land of long-term commercial significance and rural zoned lands designated under section 303 of this act within the eligible counties allocated to a receiving city under section 305 (1) and (2) of this act.

(18) "Sending areas" means those lands within an eligible county that meet conservation criteria as described in sections 301 and 303 of this act.

(19) "Sponsoring city" means a receiving city that accepts all or a portion of its receiving city allocated share, adopts a plan for development of infrastructure within one or more proposed local infrastructure project areas in accordance with section 401 of this act, and creates one or more local infrastructure project areas, as specified in section 305(4) of this act.

(20) "Sponsoring city allocated share" means the total number of transferable development rights a sponsoring city agrees to accept, under section 305(4) of this act, from agricultural and forest land of long-term commercial significance and rural zoned lands designated under section 303 of this act within the eligible counties, plus the total number of transferable development rights transferred to the sponsoring city from another receiving city under section 305(5) of this act.

(21) "Sponsoring city ratio" means the ratio of the sponsoring city specified portion to the sponsoring city allocated share.

(22) "Sponsoring city specified portion" means the portion of a sponsoring city allocated share which may be used within one or more local infrastructure project areas, as set forth in the sponsoring city's plan for development of infrastructure under section 401 of this act.

(23) "Taxing district" means a city or county that levies or has levied on behalf of the taxing district, regular property taxes upon real property located within a local infrastructure project area.

(24) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to one or more receiving areas for the purpose of increasing development density or intensity.

(25) "Transferable development rights" means a right to develop one or more residential units in a sending area that can be sold and transferred.

PART III SENDING AREAS

NEW SECTION. Sec. 301. DESIGNATION OF SENDING AREAS—INCLUSION OF AGRICULTURAL AND FOREST LAND OF LONG-TERM COMMERCIAL SIGNIFICANCE. An eligible county must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under the eligible county's program for transfer of development rights. The development rights from all such agricultural and forest land of long-term commercial significance within the eligible counties must be available for transfer to receiving cities under this chapter.

NEW SECTION. Sec. 302. DEVELOPMENT RIGHTS FROM AGRICULTURAL AND FOREST LAND OF LONG-TERM COMMERCIAL SIGNIFICANCE. (1) An eligible county must calculate the number of development rights from agricultural and forest land of long-term commercial significance that are eligible for transfer to receiving areas. An eligible county must determine transferable development rights for allocation purposes in this program by:

(a) Base zoning in effect as of January 1, 2011; or

(b) An allocation other than base zoning as reflected by an eligible county's transfer of development rights program or an interlocal agreement with a receiving city in effect as of January 1, 2011.

(2) The number of transferable development rights includes the development rights from agricultural and forest lands of long-term commercial significance that have been previously issued under the eligible county's program for transfer of development rights, but that have not as yet been utilized to increase density or intensity in a development as of January 1, 2011.

(3) The number of transferable development rights does not include development rights from agricultural and forest lands of long-term commercial significance that have previously been removed or extinguished, such as through an existing conservation easement or mitigation or habitat restoration plan, except when consistent with subsection (2) of this section.

NEW SECTION. Sec. 303. DESIGNATION OF SENDING AREAS—INCLUSION OF RURAL ZONED LANDS UNDER CERTAIN CIRCUMSTANCES. (1) Subject to the requirements of this section, an eligible county may designate a portion of its rural zoned lands as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter.

(2) An eligible county may designate rural zoned lands as available for transfer to receiving cities under this chapter only if, and at such time as, fifty percent or more of the total acreage of land classified as agricultural and forest land of long-term commercial significance in the county, as of January 1, 2011, has been protected through either a permanent conservation easement, ownership in fee by the county for land protection or conservation purposes, or ownership in fee by a nongovernmental land conservation organization.

(3) To be designated as available for transfer to receiving cities under this chapter, rural zoned lands must either:

(a) Be identified by the county as top conservation priorities because they:

(i) Provide ecological effectiveness in achieving water resource inventory area goals;

(ii) Provide contiguous habitat protection, are adjacent to already protected habitat areas, or improve ecological function;

(iii) Are of sufficient size and location in the landscape to yield strategic growth management benefits;

(iv) Provide improved access for regional recreational opportunity;

(v) Prevent forest fragmentation or are appropriate for forest management;

(vi) Provide flood protection or reduce flood risk; or

(vii) Have other attributes that meet natural resource preservation program priorities; or

(b) Be identified by the state or in regional conservation plans as highly important to the water quality of Puget Sound.

(4) The portion of rural zoned lands in an eligible county designated as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter must not exceed one thousand five hundred development rights.

NEW SECTION. Sec. 304. DETERMINATION OF TOTAL NUMBER OF TRANSFERABLE DEVELOPMENT RIGHTS FOR AGRICULTURAL AND FOREST LAND OF LONG-TERM COMMERCIAL SIGNIFICANCE AND DESIGNATED RURAL ZONED LANDS. On or before September 1, 2011, each eligible county must report to the Puget Sound regional council the total number of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands within the eligible county that may be available for allocation to receiving cities under this chapter, as determined under sections 302 and 303 of this act.

NEW SECTION. Sec. 305. ALLOCATION AMONG LOCAL GOVERNMENTS OF TRANSFERABLE DEVELOPMENT RIGHTS FROM AGRICULTURAL AND FOREST LAND OF LONG-TERM COMMERCIAL SIGNIFICANCE AND DESIGNATED RURAL ZONED LANDS. (1) The Puget Sound regional council must allocate among receiving cities the total number of development rights reported by eligible counties under section 304 of this act. Each receiving city allocated share must be determined by the Puget Sound regional council, in consultation with eligible counties and receiving cities, based on growth targets, determined by established growth management processes, and other relevant factors as determined by the Puget Sound regional council in conjunction with the counties and receiving cities.

(2) The Puget Sound regional council must report to each receiving city its receiving city allocated share on or before March 1, 2012.

(3) The Puget Sound regional council must report each receiving city allocated share to the department of commerce on or before March 1, 2012.

(4) A receiving city may become a sponsoring city by accepting all or a portion of its receiving city allocated share, adopting a plan in accordance with section 401 of this act, and creating one or more local infrastructure project areas to pay or finance costs of public improvements.

(5) A receiving city may, by interlocal agreement, transfer all or a portion of its receiving city allocated share to another sponsoring city. The transferred portion of the receiving city allocated share must be included in the other sponsoring city allocated share.

PART IV RECEIVING AREAS

NEW SECTION. Sec. 401. DEVELOPMENT PLAN FOR INFRASTRUCTURE. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must adopt a plan for development of public infrastructure within one or more proposed local infrastructure project areas sufficient to utilize, on an aggregate basis, a sponsoring city specified portion that is equal to or greater than twenty percent of the sponsoring city allocated share.

(2) The plan must be developed in consultation with the department of transportation and the county where the local infrastructure project area to be created is located, be consistent with any transfer of development rights policies or development regulations adopted by the sponsoring city under section 402 of this act, specify the public improvements to be financed using local infrastructure project financing under section 601 of this act, estimate the number of any transferable development rights that will be used within the local infrastructure project area or areas and estimate the cost of the public improvements.

(3) A plan adopted under this section may be revised from time to time by the sponsoring city, in consultation with the county where the local infrastructure project area or areas are located, to increase the sponsoring city specified portion.

NEW SECTION. Sec. 402. PROGRAM FOR TRANSFER OF DEVELOPMENT RIGHTS INTO RECEIVING AREAS—REQUIREMENTS.

(1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Adopt transfer of development rights policies or implement development regulations as required by subsection (2) of this section; or

(b) Make a finding that the sponsoring city will:

(i) Receive its sponsoring city specified portion within one or more local infrastructure project areas; or

(ii) Purchase its sponsoring city specified portion should the sponsoring city not be able to receive its sponsoring city specified portion within one or more local infrastructure project areas such that purchased development rights can be held in reserve by the sponsoring city and used in future development.

(2) Any adoption of transfer of development rights policies or implementation of development regulations must:

(a) Comply with chapter 36.70A RCW;

(b) Designate a receiving area or areas;

(c) Adopt incentives consistent with subsection (4) of this section for developers purchasing transferable development rights;

(d) Establish an exchange rate consistent with subsection (5) of this section; and

(e) Require that the sale of a transferable development right from agricultural or forest land of long-term commercial significance or designated rural zoned lands under section 303 of this act be evidenced by its permanent removal from the sending site, such as through a conservation easement on the sending site.

(3) Any adoption of transfer of development rights policies or implementation of development regulations must not be based upon a downzone within one or more receiving areas solely to create a market for the transferable development rights.

(4) Developer incentives should be designed to:

(a) Achieve the densities or intensities reasonably likely to result from absorption of the sponsoring city specified portion identified in the plan under section 401 of this act;

(b) Include streamlined permitting strategies such as by-right permitting; and

(c) Include streamlined environmental review strategies such as development and substantial environmental review of a subarea plan for a receiving area that benefits projects that use transferable development rights, with adoption as appropriate under RCW 43.21C.420 of optional elements of their comprehensive plan and optional development regulations that apply within the receiving area, adoption as appropriate of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, and adoption as appropriate of a planned action under RCW 43.21C.031 for the receiving area.

(5) Each sponsoring city may determine, at its option, what developer incentives to adopt within its jurisdiction.

(6) Exchange rates should be designed to:

(a) Create a marketplace in which transferable development rights are priced at a level at which sending site landowners are willing to sell and developers are willing to buy transferable development rights;

(b) Achieve the densities or intensities anticipated by the plan adopted under section 401 of this act;

(c) Provide for translation to commodities in addition to residential density, such as building height, commercial floor area, parking ratio, impervious surface, parkland and open space, setbacks, and floor area ratio; and

(d) Allow for appropriate exemptions from other land use or building requirements.

(7) A sponsoring city must designate all agricultural and forest land of long-term commercial significance and designated rural zoned lands under section 303 of this act within the eligible counties as available sending areas.

(8) A sponsoring city, in accordance with its existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with RCW 36.70A.080, may elect to adopt an optional comprehensive plan element and optional development regulations that apply within one or more local infrastructure project areas under this chapter.

NEW SECTION. Sec. 403. DEVELOPMENT RIGHTS AVAILABLE FOR TRANSFER TO RECEIVING CITIES. Only development rights from agricultural and forest land of long-term commercial significance within the eligible counties as determined under section 302 of this act, and rural-zoned

lands with the eligible counties designated under section 303 of this act, may be available for transfer to receiving cities in accordance with this chapter.

PART V
QUANTITATIVE AND QUALITATIVE PERFORMANCE MEASURES

NEW SECTION. **Sec. 501.** QUANTITATIVE AND QUALITATIVE PERFORMANCE MEASURES—REPORTING. The eligible counties, in collaboration with sponsoring cities, must provide a report to the department of commerce by March 1st of every other year. The report must contain the following information:

(1) The number of sponsoring cities that have adopted transfer of development rights policies and regulations incorporating transfer of development rights under this chapter, and have an interlocal agreement or have adopted the department of commerce transfer of development rights interlocal terms and conditions rule;

(2) The number of transfer of development rights transactions under this chapter using different types of transfer of development rights mechanisms;

(3) The number of acres under conservation easement under this chapter, broken out by agricultural land, forest land, and rural lands;

(4) The number of transferable development rights transferred from sending areas under this chapter;

(5) The number of transferable development rights transferred from a county into a sponsoring city under this chapter;

(6) Sponsoring city development under this chapter using transferable development rights, including:

(a) The number of total new residential units;

(b) The number of residential units created in receiving areas using transferable development rights transferred from sending areas;

(c) The amount of additional commercial floor area;

(d) The amount of additional building height;

(e) The number of required structured parking spaces reduced, if transferable development rights are specifically converted into reduced structured parking space requirements;

(f) The number of additional parking spaces allowed, if transferable development rights are specifically converted into additional receiving area parking spaces; and

(g) The amount of additional impervious surface allowed, if transferable development rights are specifically converted into receiving area impervious surfaces;

(7) The amount of the local property tax allocation revenues, if any, received in the preceding calendar year by the sponsoring city;

(8) A list of public improvements paid or financed with local infrastructure project financing;

(9) The names of any businesses locating within local infrastructure project areas as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(10) The total number of permanent jobs created in the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(11) The average wages and benefits received by all employees of businesses locating within the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing; and

(12) The date when any indebtedness issued for local infrastructure project financing is expected to be retired.

PART VI

ESTABLISHMENT OF LOCAL INFRASTRUCTURE PROJECT AREAS

NEW SECTION. Sec. 601. CREATING A LOCAL INFRASTRUCTURE PROJECT AREA. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Provide notice to the county assessor, county treasurer, and county within the proposed local infrastructure project area of the sponsoring city's intent to create one or more local infrastructure project areas. This notice must be provided at least one hundred eighty days in advance of the public hearing as required by (b) of this subsection;

(b) Hold a public hearing on the proposed formation of the local infrastructure project area.

(2) A sponsoring city may create one or more local infrastructure project areas by ordinance or resolution that:

(a) Describes the proposed public improvements, identified in the plan under section 401 of this act, to be financed in each local infrastructure project area;

(b) Describes the boundaries of each local infrastructure project area, subject to the limitations in section 602 of this act; and

(c) Provides the date when the use of local property tax allocation revenues will commence and a list of the participating taxing districts.

(3) The sponsoring city must deliver a certified copy of the adopted ordinance or resolution to the county assessor, county treasurer, and each other participating taxing district within which the local infrastructure project area is located.

NEW SECTION. Sec. 602. LIMITATIONS ON LOCAL INFRASTRUCTURE PROJECT AREAS. The designation of any local infrastructure project area is subject to the following limitations:

(1) A local infrastructure project area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of territory not included in the local infrastructure project area;

(2) The public improvements to be financed with local infrastructure project financing must be located in the local infrastructure project area and must, in the determination of the sponsoring city, further the intent of this chapter;

(3) Local infrastructure project areas created by a sponsoring city may not comprise an area containing more than twenty-five percent of the total assessed

value of taxable property within the sponsoring city at the time the local infrastructure project areas are created;

(4) The boundaries of each local infrastructure project area may not overlap and may not be changed during the time period that local infrastructure project financing is used within the local infrastructure project area, as provided under this chapter; and

(5) All local infrastructure project areas created by the sponsoring city must comprise, in the aggregate, an area that the sponsoring city determines (a) is sufficient to use the sponsoring city specified portion, unless the sponsoring city satisfies its sponsoring city allocated share under section 402(1)(b)(ii) of this act, and (b) is no larger than reasonably necessary to use the sponsoring city specified portion in projected future developments.

NEW SECTION. Sec. 603. PARTICIPATING TAXING DISTRICTS. Participating taxing districts must allow the use of all of their local property tax allocation revenues for local infrastructure project financing.

**PART VII
LOCAL INFRASTRUCTURE PROJECT FINANCING
USE OF PROPERTY TAX REVENUES TO PAY
OR FINANCE COSTS OF PUBLIC IMPROVEMENTS**

NEW SECTION. Sec. 701. ALLOCATION OF PROPERTY TAX REVENUES. (1) Commencing in the second calendar year following the creation of a local infrastructure project area by a sponsoring city, the county treasurer must distribute receipts from regular taxes imposed on real property located in the local infrastructure project area as follows:

(a) Each participating taxing district and the sponsoring city must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure project area in the taxing district; and

(b) The sponsoring city must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the local infrastructure project area. However, if there is no property tax allocation revenue value, the sponsoring city may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring city may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts must be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the local infrastructure project area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring city may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to pay or finance public improvement costs within the local infrastructure project area.

(2) The county assessor must determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not

authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3)(a) The distribution of local property tax allocation revenue to the sponsoring city must cease on the date that is the earlier of:

(i) The date when local property tax allocation revenues are no longer used or obligated to pay the costs of the public improvements; or

(ii) The final termination date as determined under (b) of this subsection.

(b) The final termination date is determined as follows:

(i) Except as provided otherwise in this subsection (3)(b), if the sponsoring city certifies to the county treasurer that the local property tax threshold level 1 is met, the final termination date is ten years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(ii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 2 is met at least six months prior to the final termination date under (b)(i) of this subsection (3), the final termination date is fifteen years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 3 is met at least six months prior to the final termination date under (b)(ii) of this subsection (3), the final termination date is twenty years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iv) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 4 is met at least six months prior to the final termination date under (b)(iii) of this subsection (3), the final termination date is twenty-five years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section.

(4) For purposes of this section:

(a) The "local property tax threshold level 1" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least twenty-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least twenty-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(b) The "local property tax threshold level 2" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least fifty percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least fifty percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(c) The "local property tax threshold level 3" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least seventy-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least seventy-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(d) The "local property tax threshold level 4" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least one hundred percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least one hundred percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(5) Any excess local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the local infrastructure project area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(6) The allocation to local infrastructure project financing of that portion of the sponsoring city's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that local infrastructure project area is declared to be a public purpose of and benefit to the sponsoring city and each participating taxing district.

(7) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

PART VIII GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN OPTIONAL ELEMENTS

Sec. 801. RCW 36.70A.080 and 1990 1st ex.s. c 17 s 8 are each amended to read as follows:

(1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

- (a) Conservation;
- (b) Solar energy; and
- (c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving

areas under chapter 39.— RCW (the new chapter created in section 903 of this act).

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in section 201 of this act.

PART IX MISCELLANEOUS

NEW SECTION. Sec. 901. ADMINISTRATION BY THE DEPARTMENT OF COMMERCE. The department of commerce may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of this chapter.

NEW SECTION. Sec. 902. 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. 903. Sections 101 through 701 of this act constitute a new chapter in Title 39 RCW.

Passed by the Senate April 15, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 319

[Senate Bill 5119]

PRESIDENTIAL PRIMARY—CANCELLATION

AN ACT Relating to cancellation of the 2012 presidential primary; amending RCW 29A.56.020; and providing an expiration date.

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

Sec. 1. RCW 29A.56.020 and 2003 c 111 s 1402 are each amended to read as follows:

(1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the

first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved.

(5) No presidential primary may be held in 2012.

NEW SECTION. Sec. 2. Section 1 of this act expires January 1, 2013.

Passed by the Senate April 6, 2011.

Passed by the House April 19, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 320

[Second Substitute Senate Bill 5622]

STATE LANDS—RECREATION ACCESS

AN ACT Relating to recreation access on state lands; amending RCW 4.24.210, 46.16A.090, 7.84.030, 79A.05.160, 43.12.065, 77.15.020, 77.32.560, 77.32.010, 77.15.750, 43.30.385, 79A.05.215, 77.12.170, 79A.05.070, and 79A.05.225; adding a new section to chapter 7.84 RCW; adding a new chapter to Title 79A RCW; repealing RCW 77.32.380; prescribing penalties; providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that there is an increasing demand for outdoor recreation opportunities and conservation measures on lands managed by the department of fish and wildlife, the department of natural resources, and the parks and recreation commission. Development and maintenance of outdoor recreation facilities and conservation of lands have not kept pace with this demand. This demand, combined with shrinking resources for management, has led to the degradation of our lands to the detriment of the recreating public and efforts to conserve our natural resources.

(2) The legislature further finds that the recreating public cannot readily discern which agency of the state is responsible for the management of particular state lands or which policies apply to those lands.

(3) It is the intent of this act to reform and improve access to and management of state lands on a sustainable basis for the recreating public by: Providing a motor vehicle access pass and access policies for state lands; recovering the cost incurred by the state for operations and management of recreation opportunities; providing resources to address the growing demand and impacts of outdoor recreationists and conservation of our natural resources; and providing effective education and enforcement of state land access policies.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" or "agencies" means the department of fish and wildlife, the department of natural resources, and the parks and recreation commission.

(2) "Annual natural investment permit" means the annual permit issued by the parks and recreation commission for the purpose of launching boats from the designated state parks boat launch sites.

(3) "Camper registration" means proof of payment of a camping fee on recreational lands managed by the parks and recreation commission.

(4) "Day-use permit" means the permit created in section 4 of this act.

(5) "Discover pass" means the annual pass created in section 3 of this act.

(6) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 and which are required to be registered under chapter 46.16A RCW. "Motor vehicle" does not include those motor vehicles exempt from registration under RCW 46.16A.080 and state and publicly owned motor vehicles as provided in RCW 46.16A.170.

(7) "Recreation site or lands" means a state park or fish and wildlife conservation sites including water access areas, boat ramps, wildlife areas, parking areas, roads, and trailheads, or department of natural resources developed or designated recreation areas, sites, trailheads, and parking areas.

(8) "Sno-park seasonal permit" means the seasonal permit issued by the parks and recreation commission for providing access to winter recreational facilities for the period of November 1st through March 31st.

(9) "Vehicle access pass" means the pass created in section 5 of this act.

NEW SECTION. Sec. 3. (1) A discover pass is required for any motor vehicle to park or operate on any recreation site or lands, except for short-term parking as may be authorized under section 8 of this act.

(2) The cost of the discover pass is thirty dollars per motor vehicle. Every four years the office of financial management must review the cost of the discover pass and, if necessary, recommend to the legislature an adjustment to the cost of the discover pass to account for inflation.

(3) The discover pass is valid for one year from the date of issuance.

(4) The discover pass must be made available for purchase throughout the year through the department of fish and wildlife's automated licensing system consistent with RCW 77.32.050.

(5) The discover pass must be made available for purchase through the department of licensing as provided in RCW 46.16A.090. The department of licensing, county auditor, or other agent or subagent appointed by the director, is not responsible for delivering a purchased discover pass to a motor vehicle owner. The agencies must deliver the purchased discover pass to a motor vehicle owner.

(6) The state parks and recreation commission may make the discover pass available for purchase through its reservation system and other outlets authorized by law to sell licenses, permits, or passes.

(7) The discover pass must contain space for the motor vehicle license plate number.

(8) A complimentary discover pass must be provided to a volunteer who performed twenty-four hours of service on agency-sanctioned volunteer projects in a year. The agency must provide vouchers to volunteers identifying the number of volunteer hours they have provided for each project. The vouchers may be brought to an agency to be redeemed for a discover pass.

NEW SECTION. Sec. 4. (1) A person may purchase a day-use permit to meet the requirements of section 9 of this act. The day-use permit is ten dollars per day and must be available for purchase from each agency. The day-use permit is valid for one calendar day.

(2) The agencies may provide short-term parking under section 8 of this act where the day-use permit is not required.

(3) Every four years the office of financial management must review the cost of the day-use permit and, if necessary, recommend to the legislature an adjustment to the cost of the day-use permit to account for inflation.

NEW SECTION. Sec. 5. (1) The vehicle access pass is created solely for access to the department of fish and wildlife recreation sites or lands. The vehicle access pass is only available to a person who purchases a current valid: Big game hunting license issued under RCW 77.32.450; small game hunting license issued under RCW 77.32.460; western Washington pheasant permit issued under RCW 77.32.575; trapping license issued under RCW 77.65.450; watchable wildlife decal issued under RCW 77.32.560; or combination, saltwater, or freshwater personal use fishing license issued under RCW 77.32.470.

(2) One vehicle access pass must be issued per purchase pursuant to subsection (1) of this section.

(3) The vehicle access pass is valid for the license year of the license it is purchased with.

NEW SECTION. Sec. 6. (1) The discover pass or the day-use permit are not required for persons who have a valid camper registration, or annual natural investment permit, issued by the state parks and recreation commission.

(2) The state parks and recreation commission may provide up to twelve days a year where entry to the state parks is free. At least three of those days must be on weekends.

NEW SECTION. Sec. 7. The discover pass or the day-use permit are not required, for persons who have a valid sno-park seasonal permit issued by the state parks and recreation commission, at designated sno-parks between November 1st through March 31st.

NEW SECTION. Sec. 8. Each agency, where applicable, must designate short term parking not to exceed thirty minutes where the discover pass or day-use permit are not required at recreation sites or lands.

NEW SECTION. Sec. 9. (1) The discover pass, the vehicle access pass, or the day-use permit must be visibly displayed in the front windshield of any motor vehicle:

- (a) Operating on a recreation site or lands; or
- (b) Parking at a recreation site or lands.

(2) The discover pass, the vehicle access pass, or the day-use permit is not required on private lands, state-owned aquatic lands other than water access areas, or at agency offices, hatcheries, or other facilities where public business is conducted.

(3)(a) The discover pass, the vehicle access pass, or the day-use permit is not required for persons who use, possess, or enter lands owned or managed by the agencies for purposes consistent with a written authorization from the agency, including but not limited to leases, contracts, and easements.

(b) The discover pass or the day-use permit is not required on department of fish and wildlife lands for persons possessing a current vehicle access pass pursuant to section 5 of this act.

(4) Failure to comply with subsection (1) of this section is a natural resource infraction under chapter 7.84 RCW. An agency is authorized to issue a notice of infraction to any person who fails to comply with subsection (1)(a) of this section or to any motor vehicle that fails to comply with subsection (1)(b) of this section.

(5) The penalty for failure to comply with the requirements of this section is ninety-nine dollars. This penalty is reduced to fifty-nine dollars if an individual provides proof of purchase of the discover pass to the court within fifteen days after the issuance of the notice of violation.

NEW SECTION. Sec. 10. (1) The recreation access pass account is created in the state treasury. All moneys received from the sale of discover passes and day-use permits must be deposited into the account.

(2) Each fiscal biennium, the first seventy-one million dollars in revenue must be distributed to the agencies in the following manner:

(a) Eight percent to the department of fish and wildlife and deposited into the state wildlife account created in RCW 77.12.170;

(b) Eight percent to the department of natural resources and deposited into the park land trust revolving fund created in RCW 43.30.385; and

(c) Eighty-four percent to the state parks and recreation commission and deposited into the state parks renewal and stewardship account created in RCW 79A.05.215.

(3) Each fiscal biennium, revenues in excess of seventy-one million dollars must be distributed equally among the agencies to the accounts identified in subsection (2) of this section.

Sec. 11. RCW 4.24.210 and 2006 c 212 s 6 are each amended to read as follows:

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

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of

litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

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

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

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

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

(b) A pass or permit issued under section 3, 4, or 5 of this act; and

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW (~~46.09.020~~) 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Sec. 12. RCW 46.16A.090 and 2010 c 161 s 420 are each amended to read as follows:

(1) The department, county auditor or other agent, or subagent appointed by the director shall provide an opportunity for a vehicle owner to make a voluntary donation as provided in this section when applying for an initial or renewal vehicle registration.

(2)(a) A vehicle owner who registers a vehicle under this chapter may donate one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the uniform anatomical gift act as described in chapter 68.64 RCW. The donation of one or more dollars is voluntary and may be refused by the vehicle owner.

(b) The department, county auditor or other agent, or subagent appointed by the director shall:

(i) Ask a vehicle owner applying for a vehicle registration if the owner would like to donate one dollar or more;

(ii) Inform a vehicle owner of the option for organ and tissue donations as required under RCW 46.20.113; and

(iii) Make information booklets or other informational material available regarding the importance of organ and tissue donations to vehicle owners.

(c) All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by another agreement by a participating Washington state organ procurement organization established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. For the purposes of this section,

"reasonable costs" and "Washington state organ procurement organization" have the same meaning as in RCW 68.64.010.

(3) The department shall collect from a vehicle owner who pays a vehicle license fee under RCW 46.17.350(1) (a), (d), (e), (g), (h), (j), (n), (o), or (q) or who registers a vehicle under RCW 46.16A.455 with a declared gross weight of ten thousand pounds or less a voluntary donation of five dollars. The donation may not be collected from any vehicle owner actively opting not to participate in the donation program. The department shall ensure that the opt-out donation under this section is clear, visible, and prominently displayed in both paper and online vehicle registration renewals. Notification of intent to not participate in the donation program must be provided annually at the time of vehicle registration renewal. The donation must be deposited in the state parks renewal and stewardship account established in RCW 79A.05.215 to be used for the operation and maintenance of state parks.

(4) Beginning with vehicle license fees that are due or will become due on or after the effective date of this section, a vehicle owner who registers a vehicle under this chapter may purchase a discover pass for a fee of thirty dollars, as may be adjusted for inflation under section 3 of this act. Purchase of the discover pass is voluntary by the vehicle owner. The discover pass fee must be deposited in the recreation access pass account created in section 10 of this act. The department, county auditor, or other agent or subagent appointed by the director is not responsible for delivering a purchased discover pass to a motor vehicle owner. The agencies, as defined in section 2 of this act, must deliver the purchased discover pass to a motor vehicle owner.

NEW SECTION. Sec. 13. A new section is added to chapter 7.84 RCW to read as follows:

The director chosen by the state parks and recreation commission, the commissioner of public lands, and the director of the department of fish and wildlife are each authorized to delegate and accept enforcement authority over natural resource infractions to or from the other agencies through an agreement entered into under the interlocal cooperation act, chapter 39.34 RCW.

Sec. 14. RCW 7.84.030 and 2009 c 174 s 1 are each amended to read as follows:

(1) An infraction proceeding is initiated by the issuance and service of a printed notice of infraction and filing of a printed or electronic copy of the notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under section 13 of this act, when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under section 13 of this act, files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

Sec. 15. RCW 79A.05.160 and 1965 c 8 s 43.51.170 are each amended to read as follows:

(1) The members of the ~~((state parks and recreation))~~ commission and ~~((such of))~~ its designated employees ~~((as the commission may designate))~~ shall be vested with police powers to enforce the laws of this state.

(2) The director may, under the provisions of section 13 of this act, enter into an agreement allowing employees of the department of natural resources and the department of fish and wildlife to enforce certain civil infractions created under this title.

Sec. 16. RCW 43.12.065 and 2003 c 53 s 229 are each amended to read as follows:

(1) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.

(2)(a) Except as otherwise provided in this subsection, a violation of any rule adopted under this section is a misdemeanor.

(b) Except as provided in (c) of this subsection, the department may specify by rule, when not inconsistent with applicable statutes, that violation of such a rule is an infraction under chapter 7.84 RCW ~~((: PROVIDED, That))~~. However, any violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(3) The commissioner of public lands and ~~((such of his or her))~~ those employees as ~~((he or she))~~ the commissioner may designate shall be vested with police powers when enforcing:

(a) The rules of the department adopted under this section; ~~((or))~~

(b) The civil infractions created under section 9 of this act; or

(c) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property.

(4) The commissioner of public lands may, under the provisions of section 13 of this act, enter into an agreement allowing employees of the state parks and recreation commission and the department of fish and wildlife to enforce certain civil infractions created under this title.

Sec. 17. RCW 77.15.020 and 2005 c 321 s 2 are each amended to read as follows:

(1) 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. Neither the commission nor the director have the authority to adopt a rule providing that a violation punishable as an infraction shall be a crime.

(2) The director may, under the provisions of section 13 of this act, enter into an agreement allowing employees of the state parks and recreation commission and the department of natural resources to enforce certain civil infractions created under this title.

Sec. 18. RCW 77.32.560 and 2009 c 333 s 42 are each amended to read as follows:

(1) The department may sell watchable wildlife decals. Proceeds from the sale of the decal must be deposited into the state wildlife account created in RCW 77.12.170 and must be dedicated to the support of the department's watchable wildlife activities. The department may also use proceeds from the sale of the decal for marketing the decal and for marketing watchable wildlife activities in the state.

(2) The term "watchable wildlife activities" includes but is not limited to: Initiating partnerships with communities to jointly develop watchable wildlife projects, building infrastructure to serve wildlife viewers, assisting and training communities in conducting wildlife watching events, developing destination wildlife viewing corridors and trails, tours, maps, brochures, and travel aides, and offering grants to assist rural communities in identifying key wildlife attractions and ways to protect and promote them.

(3) The commission must adopt by rule the cost of the watchable wildlife decal. A person may, at their discretion, contribute more than the cost as set by the commission by rule for the watchable wildlife decal in order to support watchable wildlife activities. ~~((A person who purchases a watchable wildlife decal must be issued one vehicle use permit free of charge.))~~

Sec. 19. RCW 77.32.010 and 2009 c 564 s 956 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a recreational license issued by the director is required to hunt for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and seaweed. A recreational fishing or shellfish license is not required for carp, smelt, and crawfish, and a hunting license is not required for bullfrogs.

(2) ~~A pass or permit issued ((by the department is required to park a motor vehicle upon improved department access facilities))~~ under section 3, 4, or 5 of this act is required to park or operate a motor vehicle on a recreation site or lands, as defined in section 2 of this act.

(3) During the 2009-2011 fiscal biennium to enable the implementation of the pilot project established in section 307, chapter 329, Laws of 2008, a fishing permit issued to a nontribal member by the Colville Tribes shall satisfy the license requirements in subsection (1) of this section on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and a Colville Tribes tribal member identification card shall satisfy the license requirements in subsection (1) of this section on all waters of Lake Rufus Woods.

Sec. 20. RCW 77.15.750 and 2010 c 193 s 9 are each amended to read as follows:

(1) A person is guilty of unlawful use of a department permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the requirement for, issuance of, or use of the permit.

(2)(a) Permits covered under subsection (1) of this section include, but are not limited to, master hunter permits, crab pot removal permits and shellfish pot removal permits under RCW 77.70.500, depredation permits, landowner hunting permits, commercial carp license permits, permits to possess or dispense beer or malt liquor pursuant to RCW 66.28.210, and permits to hold, sponsor, or attend an event requiring a banquet permit from the liquor control board.

(b) Permits excluded from subsection (1) of this section include (~~fish and wildlife lands vehicle use permits~~) the discover pass created in section 3 of this act, the vehicle access pass created in section 5 of this act, the day-use permit created in section 4 of this act, commercial use or activity permits, noncommercial use or activity permits, parking permits, experimental fishery permits, trial commercial fishery permits, and scientific collection permits.

(3) Unlawful use of a department permit is a misdemeanor.

(4) A person is guilty of unlawful use of an experimental fishery permit or a trial commercial fishery permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the issuance or use of the permit.

(5) Unlawful use of an experimental fishery permit or a trial commercial fishery permit is a gross misdemeanor.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Experimental fishery permit" means a permit issued by the director for either:

(i) An "emerging commercial fishery," defined as a fishery for a newly classified species for which the department has determined that there is a need to limit participation; or

(ii) An "expanding commercial fishery," defined as a fishery for a previously classified species in a new area, by a new method, or at a new effort level, for which the department has determined that there is a need to limit participation.

(b) "Trial commercial fishery permit" means a permit issued by the department for trial harvest of a newly classified species or harvest of a previously classified species in a new area or by a new means.

Sec. 21. RCW 43.30.385 and 2009 c 354 s 9 are each amended to read as follows:

(1) The park land trust revolving fund is to be utilized by the department for the purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in this fund. Disbursement from

the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department. The proceeds from real property transferred or disposed under RCW 79.22.060 must be solely used to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed. The proceeds from the recreation access pass account created in section 10 of this act must be solely used for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(2) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities.

Sec. 22. RCW 79A.05.215 and 2010 c 161 s 1164 are each amended to read as follows:

The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16A.090(3), and other state park-based activities shall be deposited into the account. The proceeds from the recreation access pass account created in section 10 of this act must be used for the purpose of operating and maintaining state parks. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature.

Sec. 23. RCW 77.12.170 and 2009 c 333 s 13 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife account 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, unless the property is seized or recovered through a fish, shellfish, or wildlife enforcement action;
- (c) The assessment of administrative penalties, and the sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and 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, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter ~~((46.16))~~ 46.17 RCW;

- (f) Articles or wildlife sold by the director under this title;
 - (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320. However, this excludes fish and shellfish overages, and court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action, as such moneys must be deposited pursuant to RCW 77.15.425;
 - (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
 - (i) The department's share of revenues from auctions and raffles authorized by the commission; ~~((and))~~
 - (j) The sale of watchable wildlife decals under RCW 77.32.560; and
 - (k) Moneys received from the recreation access pass account created in section 10 of this act must be dedicated to stewardship, operations, and maintenance of department lands used for public recreation purposes.
- (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 account.

Sec. 24. RCW 79A.05.070 and 2006 c 141 s 1 are each amended to read as follows:

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;
- (3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;
- (4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;
- (5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;
- (6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper(~~(. The commission may not charge fees for general park access or parking)~~);

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed forty years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

Sec. 25. RCW 79A.05.225 and 1999 c 249 s 1401 are each amended to read as follows:

(1) In addition to its other powers, duties, and functions the commission may:

~~((1))~~ (a) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

~~((2))~~ (b) Provide and issue upon payment of the proper fee, under RCW 79A.05.230, 79A.05.240, and 46.61.585, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

~~((3))~~ (c) Administer the snow removal operations for all designated winter recreational area parking spaces; and

~~((4))~~ (d) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

(2) The commission must require the winter recreation program and its services to be self-supported solely through permit fees, gifts, grants, donations, and other revenues dedicated to the winter recreational program account in RCW 79A.05.235 and the snowmobile account in RCW 46.10.075.

(3) The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW ~~((46.10.210))~~ 46.10.370, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter.

NEW SECTION. Sec. 26. Section 12 of this act takes effect October 1, 2011.

NEW SECTION. Sec. 27. Sections 1 through 10 of this act constitute a new chapter in Title 79A RCW.

NEW SECTION. Sec. 28. RCW 77.32.380 (Fish and wildlife lands vehicle use permit—Improved access facility—Fee—Youth groups—Display—Transfer between vehicles—Penalty) and 2003 c 317 s 4, 2001 c 243 s 1, 2000 c 107 s 271, 1998 c 87 s 1, 1993 sp.s. c 2 s 77, 1991 sp.s. c 7 s 12, 1988 c 36 s 52, 1987 c 506 s 90, 1985 c 464 s 11, & 1981 c 310 s 15 are each repealed.

NEW SECTION. Sec. 29. Except for section 12 of this act, 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 July 1, 2011.

Passed by the Senate April 20, 2011.

Passed by the House April 21, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 321

[Second Substitute Senate Bill 5636]

UNIVERSITY CENTER OF NORTH PUGET SOUND

AN ACT Relating to expanding opportunities in higher education in north Puget Sound; amending RCW 28B.50.795; adding a new section to chapter 28B.30 RCW; repealing RCW 28B.50.901; and providing a contingent effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.30 RCW to read as follows:

(1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of north Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education compared to demand in this geographic region lags behind enrollment in other parts of the state, particularly for upper-division courses leading to advanced degrees.

(2) The legislature also finds that access to high employer demand programs of study is imperative for the state's global competitiveness and economic prosperity, particularly those degrees in the science, technology, engineering, and mathematics (STEM) fields that align with the workforce skill demands of the regional economy, that support the aerospace industry, and provide skilled undergraduate and graduate-degree engineers required by the largest employers in the aerospace industry cluster.

(3) The legislature finds that meeting the long-range goal of greatly expanded access for the population of the region to the widest array of baccalaureate and graduate programs can best be accomplished by assigning responsibility to a research university with multiple experiences in similar settings.

(4) Management and leadership of the University Center of North Puget Sound is assigned to Washington State University to meet the needs of the Everett metropolitan area and the north Snohomish, Island, and Skagit county region and the state of Washington for baccalaureate and graduate degrees offered by a state university. The chief executive officer of the University Center of North Puget Sound is the director who reports to the president of Washington State University. The director shall manage the activities and logistics of operating the center, make policy and planning recommendations to the council in subsection (5) of this section, and implement decisions of the council.

(5)(a) Washington State University and Everett Community College must collaborate with community leaders, and other four-year institutions of higher education that offer programs at the University Center of North Puget Sound to serve the varied interests of students in the region. To this end, a coordinating and planning council must be established to be responsible for long-range and strategic planning, interinstitutional collaboration, collaboration with the community served, and dispute resolution for the center. The following individuals shall comprise the coordinating and planning council:

- (i) The president of Washington State University, or his or her designee;
- (ii) The provost of Washington State University, or his or her designee;
- (iii) The president of Everett Community College;
- (iv) Two representatives of two other institutions of higher education that offer baccalaureate or graduate degree programs at the center;
- (v) A student enrolled at the University Center of North Puget Sound appointed by the coordinating and planning council;
- (vi) The director of the council, as the nonvoting chair;
- (vii) A community leader appointed by the president of Everett Community College; and
- (viii) A community leader appointed by the mayor of Everett.

(b) The coordinating and planning council may appoint other groups, as appropriate, to advise on administration and operations, and may alter its own composition by agreement of all the members.

(6)(a) Washington State University shall assume leadership of the center upon completion and approval by the legislature as provided under (d) of this subsection of a strategic plan for meeting the academic needs of the region and successful establishment of an engineering degree program. The strategic plan must build on the strengths of the institutions, reflecting each institution's mission, in order to provide the region with the highest standard of educational programs, research, and service to the community. The strategic plan must include a multiyear budget that addresses both operating and capital expenses required to effectively implement the plan. The strategic plan shall be developed with the collaboration of the University Center at Everett Community College and all the institutions of higher education that provide baccalaureate degrees at the University Center, and community leaders.

(b) Center partners must implement the strategic plan with careful attention to the academic and professional standards established and maintained by each institution and by the appropriate accrediting bodies, and to the historic role of each institution's governing board in setting policy.

(c) The strategic plan must address expansion of the range and depth of educational opportunities in the region and include strategies that:

(i) Build upon baccalaureate and graduate degree offerings at the center;

(ii) Meet projected student enrollment demands for baccalaureate, graduate, and certificate programs in the region;

(iii) Meet employers' needs for skilled workers by expanding high employer demand programs of study as defined in RCW 28B.50.030, with an initial and ongoing emphasis by Washington State University on undergraduate and graduate science, technology, mathematics, and engineering degree programs, including a variety of engineering disciplines such as civil, mechanical, aeronautical, and aerospace manufacturing;

(iv) Coordinate delivery of lower and upper division courses to maximize student opportunities and resources; and

(v) Transfer budget support and resources for the center from Everett Community College to Washington State University.

(d) The strategic plan must be completed by December 1, 2012, and submitted to the legislature for review. The strategic plan shall be considered approved if the legislature does not take further action on the strategic plan during the 2013 legislative session. The transfer of the responsibility for the management and operation of the University Center of North Puget Sound to Washington State University must occur by July 1, 2014.

(7)(a) Academic programming and delivery at the center must be developed in accordance with the missions of Washington State University, Everett Community College, and other institutions of higher education that have a presence at the center.

(b) Each institution shall abide by the guidelines for university centers adopted by the higher education coordinating board.

(c) Each institution shall award all degrees and certificates granted in the programs it delivers at the center.

(d) The coordinating council described in subsection (5) of this section shall establish a process for prioritizing new programs and revising existing programs that facilitates timeliness of new offerings, recognizes the internal processes of the proposing institutions, and addresses each proposal's fit with the needs of the region.

(8)(a) Washington State University shall review center expansion needs and consider capital facilities funding at least annually. Washington State University and Everett Community College must cooperate in preparing funding requests and bond financing for submission to the legislature on behalf of development at the center, in accordance with each institution's process and priorities for advancing legislative requests.

(b) Washington State University shall design, construct, and manage any facility developed at the center. Any facility developed at the center with Everett Community College capital funding must be designed by Everett Community College in consultation with Washington State University. Building construction may be managed by Washington State University via an interagency agreement which details responsibility and associated costs. Building operations and management for all facilities at the center must be governed by the infrastructure and operating cost allocation method described in subsection (9) of this section.

(9) Washington State University has responsibility for infrastructure development and maintenance for the center. All infrastructure operating and maintenance costs are to be shared in what is deemed to be an equitable and fair manner based on space allocation, special cost, and other relevant considerations. Washington State University may make infrastructure development and maintenance decisions in consultation with the council described in subsection (5) of this section.

(10) In the event that conflict cannot be resolved through the coordinating council described in subsection (5) of this section the higher education coordinating board dispute resolution must be employed.

Sec. 2. RCW 28B.50.795 and 2010 1st sp.s. c 25 s 1 are each amended to read as follows:

(1) ~~((RCW 28B.50.901 assigns responsibility for the north Snohomish, Island, and Skagit counties' higher education consortium to Everett Community College. In April of 2009, Everett Community College opened Gray Wolf Hall, the new home of the University Center of North Puget Sound. The University Center currently offers over twenty bachelor's and master's degrees from six partner universities.~~

~~((2))~~ (2) Although Everett Community College offers an associate degree nursing program that graduates approximately seventy to ninety students per year, the University Center does not offer a bachelor of science in nursing. Some graduates of the Everett Community College program are able to articulate to the bachelor of science in nursing program offered by the University of Washington-Bothell at its Bothell campus or in Mt. Vernon but current capacity is not sufficient for all of the graduates who are both interested and qualified.

~~((3))~~ (2) Despite recent growth in nursing education capacity, shortages still persist for registered nurses. According to a June 2007 study by the Washington, Wyoming, Alaska, Montana, and Idaho center for health workforce studies, the average age of Washington's registered nurses was forty-eight years. More than a third were fifty-five years of age or older. Consequently, the high rate of registered nurses retiring from nursing practice over the next two decades will significantly reduce the supply. This reduction comes at the same time as the state's population grows and ages. The registered nurse education capacity in Washington has a large impact on the supply of registered nurses in the state. If the rate of graduation in registered nursing does not increase, projections show that supply in Washington will begin to decline by 2015. In contrast, if graduation rates increased by four hundred per year, the supply of registered nurses would meet estimated demand by the year 2021.

~~((4))~~ (3) Subject to specific funding to support up to fifty full-time equivalent students in a bachelor of nursing program, the University Center ~~((at Everett Community College))~~ of North Puget Sound, in partnership with the University of Washington-Bothell, shall offer a bachelor of science in nursing program with capacity for up to fifty full-time students.

NEW SECTION. Sec. 3. (1) This act takes effect only after the higher education coordinating board determines whether a needs assessment and analysis is required and, if so, conducts a needs assessment and viability determination under RCW 28B.76.230 and recommends that the provisions in section 1 of this act occur.

(2) The higher education coordinating board must make a recommendation under subsection (1) of this section by July 1, 2012.

(3) The higher education coordinating board shall notify the office of financial management, the legislature, and the code reviser's office of the board's recommendations regarding the provisions in section 1 of this act.

NEW SECTION. Sec. 4. RCW 28B.50.901 (Regional higher education consortium management and leadership—Everett Community College—Educational plan) and 2005 c 258 s 13 are each repealed.

Passed by the Senate April 21, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 322

[Senate Bill 5083]

REAL ESTATE BROKERAGE SERVICES—TAXES—BASIS

AN ACT Relating to clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction; amending RCW 82.04.255; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature intends to clarify existing law that the basis for determining the business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a real estate transaction. In clarifying existing law, the legislature intends to preserve the historic method of calculating business and occupation tax for real estate firms.

Sec. 2. RCW 82.04.255 and 1997 c 7 s 1 are each amended to read as follows:

(1) Upon every person engaging within the state (~~as a real estate broker~~) in the business of providing real estate brokerage services; as to such persons, the amount of the tax with respect to such business (~~shall be~~) is equal to the gross income of the business, multiplied by the rate of 1.5 percent.

(2) The measure of the tax on real estate commissions earned by the real estate (~~broker shall be~~) firm is the gross commission earned by the particular real estate (~~brokerage office~~) firm including that portion of the commission paid to (~~salesmen or associate~~) brokers, including designated and managing brokers, in the same ((office)) firm on a particular transaction((: PROVIDED, HOWEVER, That where)). However, when a real estate commission on a particular transaction is divided ((between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall)) among real estate firms at the closing of the transaction, including a firm located out of state, each firm must pay the tax only upon ((their)) its respective shares of said commission((: AND PROVIDED FURTHER, That where the brokerage office)). Moreover, when the real estate firm has paid the tax as provided herein, ((salesmen or associate)) brokers, including designated and managing brokers, within the same ((brokerage office shall)) real estate firm may not be required to pay a similar tax upon the same transaction. If any firm

located out of state receives a share of commission on a particular transaction, that company or broker must pay the tax based on the requirements of this section and RCW 82.04.067.

(3) For the purposes of this section, "broker," "designated broker," "managing broker," and "real estate firm" have the same meaning as provided in RCW 18.85.011.

****NEW SECTION. Sec. 3. This act applies both prospectively and retroactively.***

*Sec. 3 was vetoed. See message at end of chapter.

Passed by the Senate March 2, 2011.

Passed by the House April 8, 2011.

Approved by the Governor May 12, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 13, 2011.

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

"I am returning herewith, without my approval as to Section 3, Senate Bill 5083 entitled:

"AN ACT Relating to clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction."

Senate Bill 5083 provides that when a real estate commission on a particular transaction is divided among real estate firms at the closing of the transaction, each firm must pay the tax only upon its respective share.

Section 3 would apply this act both prospectively and retroactively. The retroactive application of the bill would reward delinquent taxpayers while those who paid on time would not receive a refund under the prohibition on the gift of state funds in Article VIII, Section 5 of the Washington Constitution, as interpreted by the Washington Supreme Court.

For this reason, I have vetoed Section 3 of Senate Bill 5083.

With the exception of Section 3, Senate Bill 5083 is approved."

CHAPTER 323

[Substitute Senate Bill 5451]

SHORELINE MASTER PROGRAMS

AN ACT Relating to shoreline structures in a master program adopted under the shoreline management act; adding a new section to chapter 90.58 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development.

(2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management act prior to the update of shoreline regulations. It is in the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

(3) Updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing structures will result in no net loss of the ecological function of the shoreline. Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources.

NEW SECTION. Sec. 2. A new section is added to chapter 90.58 RCW to read as follows:

(1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

Passed by the Senate April 18, 2011.

Passed by the House April 5, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 324

[Substitute Senate Bill 5688]

SHARK FINNING

AN ACT Relating to shark finning activities; amending RCW 77.08.010; adding a new section to chapter 77.15 RCW; 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 and declares the following:

(1) The practice of shark finning, where a shark is caught, its fins are sliced off while it is still alive, and the animal returned to the sea severely and almost always fatally wounded, constitutes a serious threat to Washington's coastal ecosystem and biodiversity. Sharks are particularly susceptible to overfishing because they only reach sexual maturity between seven to twelve years of age and hatch or birth small litters. The destruction of the population of sharks, which reside at the top of the marine food chain, is an urgent problem that upsets the balance of species in the ocean ecosystem.

(2) Shark finning condemns millions of sharks every year to slow, painful deaths. Returned to the water without their fins, the maimed sharks are attacked by other predators or drown, because most shark species must swim in order to push water through their gills. Shark finning is therefore a cruel practice contrary to the good morals of the citizens of the state of Washington.

(3) The market for shark fins drives the brutal practice of shark finning. Shark finning and trade in shark fins and shark fin derivative products are occurring all along the Pacific Coast, including the state of Washington.

(4) The consumption of shark fins and shark fin derivative products by humans may cause serious health risks, including risks from mercury.

NEW SECTION. Sec. 2. A new section is added to chapter 77.15 RCW to read as follows:

(1) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the second degree if:

(a) The person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative product for commercial purposes; or

(b) The person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes.

(2) Except as otherwise provided in this section, a person is guilty of unlawful trade in shark fins in the first degree if:

(a) The person commits the act described by subsection (1) of this section and the violation involves shark fins or a shark fin derivative product with a total market value of two hundred fifty dollars or more;

(b) The person commits the act described by subsection (1) of this section and acted with knowledge that the shark fin or shark fin derivative product originated from a shark that was harvested in an area or at a time where or when the harvest was not legally allowed or by a person not licensed to harvest the shark; or

(c) The person commits the act described by subsection (1) of this section and the violation occurs within five years of entry of a prior conviction under this section or a prior conviction for any other gross misdemeanor or felony under this title involving fish, other than a recreational fishing violation.

(3)(a) Unlawful trade in shark fins in the second degree is a gross misdemeanor. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(b) Unlawful trade in shark fins in the first degree is a class C felony. Upon conviction, the department shall suspend any commercial fishing privileges for the person that requires a license under this title for a period of one year.

(4) Any person who obtains a license or permit issued by the department to take or possess sharks or shark parts for bona fide research or educational purposes, and who sells, offers for sale, purchases, offers to purchase, or otherwise trades a shark fin or shark fin derivative product, exclusively for bona fide research or educational purposes, may not be held liable under or subject to the penalties of this section.

(5) Nothing in this section prohibits the sale, offer for sale, purchase, offer to purchase, or other exchange of shark fins or shark fin derivative products for commercial purposes, or preparation or processing of shark fins or shark fin

derivative products for purposes of human or animal consumption for commercial purposes, if the shark fins or shark fin derivative products were lawfully harvested or lawfully acquired prior to the effective date of this section.

Sec. 3. RCW 77.08.010 and 2009 c 333 s 12 are each amended to read as follows:

The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "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.

(2) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (3), (28), (40), (44), (58), and (59) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(3) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(4) "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.

(5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(6) "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, taking, or possession of game animals, game birds, game fish, food fish, or shellfish 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, take, harvest, or possess by rule of the commission as an open season.

(7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(8) "Commercial" means related to or connected with buying, selling, or bartering.

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Contraband" means any property that is unlawful to produce or possess.

(12) "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.

(13) "Department" means the department of fish and wildlife.

(14) "Director" means the director of fish and wildlife.

(15) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(16) "Ex officio 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 fish and wildlife officer" includes 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.

(17) "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.

(18) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(19) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(20) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(21) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(24) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(25) "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.

(26) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(27) "Illegal items" means those items unlawful to be possessed.

(28) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(29) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(30) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(31) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(32) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(33) "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.

(34) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish 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, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(35) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(36) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(37) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(38) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(39) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(40) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(41) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(42) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(43) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(44) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(45) "Resident" means:

(a) 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; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(46) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(47) "Saltwater" means those marine waters seaward of river mouths.

(48) "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.

(49) "Senior" means a person seventy years old or older.

(50) "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.

(51) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(52) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(53) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(54) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(55) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(56) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(57) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(58) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(59) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(60) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

(61) "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 old world rats and mice of the family Muridae of the order Rodentia.

(62) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(63) "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, old world rats and mice of the family Muridae of the order Rodentia, 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.

(64) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(65) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(66)(a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

Passed by the Senate April 20, 2011.

Passed by the House April 5, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 325

[Substitute Senate Bill 5156]

VIP AIRPORT LOUNGES—ALCOHOL

AN ACT Relating to airport lounges under the alcohol beverage control act; amending RCW 66.24.440, 66.20.310, 66.20.300, 66.28.290, 66.08.180, 66.08.220, and 68.50.107; reenacting and amending RCW 66.04.010; and adding a new section to chapter 66.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 66.24 RCW to read as follows:

There shall be a license to allow a VIP airport lounge operator to sell or otherwise provide spirits, wine, and beer solely for consumption on the premises of a VIP airport lounge. The license described in this section allows the VIP airport lounge operator to purchase spirits from the board, and to purchase beer and wine at retail outlets, or from the manufacturer or a distributor. No licensee may serve liquor from a bar where patrons may sit to be served, but may only serve liquor from a service bar, as approved by the board. The annual fee for this license shall be two thousand dollars.

Sec. 2. RCW 66.04.010 and 2009 c 373 s 1 and 2009 c 271 s 2 are each reenacted and amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a

fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by

volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both, and has an occupancy load of one hundred or more.

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(40) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(41) "Store" means a state liquor store established under this title.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(47) "VIP airport lounge" means an establishment within an international airport located beyond security checkpoints that provides a special space to sit, relax, read, work, and enjoy beverages where access is controlled by the VIP airport lounge operator and is generally limited to the following classifications of persons:

(a) Airline passengers of any age whose admission is based on a first-class, executive, or business class ticket;

(b) Airline passengers of any age who are qualified members or allowed guests of certain frequent flyer or other loyalty incentive programs maintained by airlines that have agreements describing the conditions for access to the VIP airport lounge;

(c) Airline passengers of any age who are qualified members or allowed guests of certain enhanced amenities programs maintained by companies that have agreements describing the conditions for access to the VIP airport lounge;

(d) Airport and airline employees, government officials, foreign dignitaries, and other attendees of functions held by the airport authority or airlines related to the promotion of business objectives such as increasing international air traffic and enhancing foreign trade where access to the VIP airport lounge will be controlled by the VIP airport lounge operator; and

(e) Airline passengers of any age or airline employees whose admission is based on a pass issued or permission given by the airline for access to the VIP airport lounge.

(48) "VIP airport lounge operator" means an airline, port district, or other entity operating a VIP airport lounge that: Is accountable for compliance with the alcohol beverage control act under Title 66 RCW; holds the license under chapter 66.24 RCW issued to the VIP airport lounge; and provides a point of contact for addressing any licensing and enforcement by the board.

(49) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

Sec. 3. RCW 66.24.440 and 2009 c 271 s 8 are each amended to read as follows:

Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, ~~((and))~~ sports entertainment facility licensee, and VIP airport lounge 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. 4. RCW 66.20.310 and 2010 c 141 s 2 are each amended to read as follows:

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, ~~((and))~~ 66.24.600, and section 1 of this act may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363.

Sec. 5. RCW 66.20.300 and 2010 c 141 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his

or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570, and section 1 of this act;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

Sec. 6. RCW 66.28.290 and 2009 c 506 s 3 are each amended to read as follows:

(1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than not to result in an adverse impact on public health and safety. The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570 and section 1 of this act, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this

title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

Sec. 7. RCW 66.08.180 and 2009 c 271 s 3 are each amended to read as follows:

Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210(~~(= PROVIDED, That)~~). However, the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties, and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; spirits, beer, and wine nightclub; spirits, beer, and wine VIP airport lounge; and sports entertainment facility licenses shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for.

Sec. 8. RCW 66.08.220 and 2009 c 271 s 4 are each amended to read as follows:

The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; hotel; spirits, beer, and wine VIP airport lounge; and sports entertainment facility licensees collected from these licensees pursuant to the

provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account.

Sec. 9. RCW 68.50.107 and 2009 c 271 s 11 are each amended to read as follows:

There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; spirits, beer, and wine VIP airport lounge; and sports entertainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445.

Passed by the Senate April 15, 2011.

Passed by the House April 11, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 326

[Substitute House Bill 1046]

VEHICLES AND VESSELS—QUICK TITLE

AN ACT Relating to vehicle and vessel quick title; amending RCW 88.02.640; adding a new section to chapter 46.12 RCW; adding a new section to chapter 46.17 RCW; adding a new section to chapter 46.68 RCW; adding a new section to chapter 88.02 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. A new section is added to chapter 46.12 RCW under the subchapter heading "general provisions" to read as follows:

(1) The application for a quick title of a vehicle must be submitted by the owner or the owner's representative to the department, participating county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vehicle, including make, model, vehicle identification number, type of body, and the odometer reading at the time of delivery of the vehicle, when required;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party; and

(c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

(a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under section 2 of this act; and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) The quick title process authorized under this section may not be used to obtain the first title issued to a vehicle previously designated as a salvage vehicle as defined in RCW 46.04.514.

(7) A subagent may process a quick title under this section only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles.

NEW SECTION. Sec. 2. A new section is added to chapter 46.17 RCW under the subchapter heading "certificate of title fees" to read as follows:

Before accepting an application for a quick title of a vehicle under section 1 of this act, the department, participating county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a fifty dollar quick title service fee in addition to any other fees and taxes required by law. The quick title service fee must be distributed under section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 46.68 RCW to read as follows:

(1) The quick title service fee imposed under section 2 of this act must be distributed as follows:

(a) If the fee is paid to the director, the fee must be deposited to the motor vehicle fund established under RCW 46.68.070.

(b) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the motor vehicle fund established under RCW 46.68.070. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(2) For the purposes of this section, "quick title" has the same meaning as in section 1 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 88.02 RCW under the subchapter heading "certificates of title" to read as follows:

(1) The application for a quick title of a vessel must be made by the owner or the owner's representative to the department, participating county auditor or

other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vessel, including make, model, hull identification number, series, and body;

(b) The name and address of the person who is to be the registered owner of the vessel and, if the vessel is subject to a security interest, the name and address of the secured party; and

(c) Other information as may be required by the department.

(2) The application for a quick title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department must keep a copy of the application.

(3) The application for a quick title must be accompanied by:

(a) All fees and taxes due for an application for a certificate of title, including a quick title service fee under RCW 88.02.640(1); and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(4) All applications for quick title must meet the requirements established by the department.

(5) For the purposes of this section, "quick title" means a certificate of title printed at the time of application.

(6) A subagent may process a quick title under this section only after (a) the department has instituted a process in which blank certificates of title can be inventoried; (b) the county auditor of the county in which the subagent is located has processed quick titles for a minimum of six months; and (c) the county auditor approves a request from a subagent in its county to process quick titles.

Sec. 5. RCW 88.02.640 and 2010 c 161 s 1028 are each amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsections (3) and (4) of this section	Subsection (3) of this section
(c) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(d) Filing	RCW 46.17.005	RCW 46.17.005	RCW 46.68.440
(e) License plate technology	RCW 46.17.015	RCW 46.17.015	RCW 46.68.400
(f) License service	RCW 46.17.025	RCW 46.17.025	RCW 46.68.220
(g) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (6) of this section
(h) Quick title service	\$50.00	Section 4(3) of this act	Subsection (7) of this section
(i) Registration	\$10.50	RCW 88.02.560(2)	General fund

((j)) (j) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
((k)) (k) Title application	\$5.00	RCW 88.02.515	General fund
((l)) (l) Transfer	\$1.00	RCW 88.02.560(7)	General fund
((m)) (m) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	General fund

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3)(a) Until June 30, 2012, the derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(i) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(ii) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667;

(iii) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(iv) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(b) On and after June 30, 2012, the derelict vessel and invasive species removal fee is two dollars and must be deposited into the derelict vessel removal account created in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollar derelict vessel and invasive species removal fee must be suspended for the following fiscal year.

(4) Until January 1, 2014, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge:

(a) Is to address the significant backlog of derelict vessels accumulated in Washington state waters that pose a threat to the health and safety of the people and to the environment;

(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length; and

(c) Must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.655; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(b) For the purposes of this subsection, "quick title" has the same meaning as in section 4 of this act.

NEW SECTION. Sec. 6. This act applies to quick title transactions processed on and after January 1, 2012.

NEW SECTION. Sec. 7. This act takes effect January 1, 2012.

Passed by the House April 21, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 327

[Substitute House Bill 1051]

TRUSTS AND ESTATES

AN ACT Relating to trusts and estates; amending RCW 11.02.005, 11.28.237, 11.68.090, 11.94.050, 11.96A.030, 11.96A.050, 11.96A.070, 11.96A.110, 11.96A.120, 11.97.010, 11.98.009, 11.98.039, 11.98.045, 11.98.051, 11.98.055, 11.98.070, and 11.100.090; adding new sections to chapter 11.96A RCW; adding a new section to chapter 11.97 RCW; adding new sections to chapter 11.98 RCW; adding a new chapter to Title 11 RCW; creating a new section; and providing an effective date.

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

Sec. 1. RCW 11.02.005 and 2008 c 6 s 901 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left

issue surviving the decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(4) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account,

deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(18) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

(19) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

(20) "Settlor" has the same meaning as provided for "trustor" in this section.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

Sec. 2. RCW 11.28.237 and 1997 c 252 s 85 are each amended to read as follows:

(1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him

or her, and proof of such mailing or service shall be made by affidavit and filed in the cause. If a trust is a legatee or devisee of the estate or a beneficiary or transferee of a nonprobate asset of the decedent, then notice to the trustee is sufficient.

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause.

Sec. 3. RCW 11.68.090 and 2003 c 254 s 3 are each amended to read as follows:

(1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under (~~RCW 11.98.070 and~~) chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment.

Sec. 4. RCW 11.94.050 and 2001 c 203 s 12 are each amended to read as follows:

(1) Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To

make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust to the extent consistent with the terms of the trust agreement; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust(¶); or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

Sec. 5. RCW 11.96A.030 and 2009 c 525 s 20 are each amended to read as follows:

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

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and

other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; ~~(and)~~

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under section 11 of this act.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

~~(7) ("Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.~~

~~(8))~~ "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

~~((9) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.~~

~~(10))~~ (8) "Trustee" means any acting and qualified trustee of the trust.

Sec. 6. RCW 11.96A.050 and 2001 c 203 s 10 are each amended to read as follows:

(1) Venue for proceedings pertaining to trusts shall be:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where ~~((letters testamentary were granted to a personal representative of the estate subject to the will or, in the alternative, the superior court of the county of the situs of the trust; and~~

~~(b) For all other trusts, in the superior court of the county in which the situs of the trust is located, or, if the situs is not located in the state of Washington, in any county)) the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and~~

~~(b) For all other trusts, in the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.~~

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a beneficiary of the trust entitled to notice under RCW 11.97.010, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

~~((3))~~ (4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1) ~~((or))~~, (2), or (3) of this section, ~~((may))~~ shall be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

~~((4))~~ (5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection ~~((2))~~ (4) of this section.

~~((5))~~ (6) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

~~((6))~~ (7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

~~((7))~~ (8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

Sec. 7. RCW 11.96A.070 and 1999 c 42 s 204 are each amended to read as follows:

(1)(a) ~~((An action against the trustee of an express trust for a breach of fiduciary duty must be brought within three years from the earlier of: (i) The time the alleged breach was discovered or reasonably should have been discovered; (ii) the discharge of a trustee from the trust as provided in RCW 11.98.041 or by agreement of the parties under RCW 11.96A.220; or (iii) the time of termination of the trust or the trustee's repudiation of the trust.~~

~~(b) The provisions of (a) of this subsection apply to all express trusts, no matter when created, however it shall not apply to express trusts created before June 10, 1959, until the date that is three years after January 1, 2000.~~

~~(e)) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.~~

~~(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence. A report that includes the following information is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust:~~

~~(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;~~

~~(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;~~

~~(iii) The trustee's compensation for the period;~~

~~(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;~~

~~(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;~~

~~(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in section 32 of this act or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;~~

~~(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and~~

~~(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.~~

~~(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:~~

~~(i) The removal, resignation, or death of the trustee;~~

~~(ii) The termination of the beneficiary's interest in the trust; or~~

~~(iii) The termination of the trust.~~

~~(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, ((trusts created by the judgment or decree of a court not sitting in probate,)) liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.~~

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

Sec. 8. RCW 11.96A.110 and 1999 c 42 s 304 are each amended to read as follows:

(1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section

if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service ~~((or))~~, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400.

Sec. 9. RCW 11.96A.120 and 2008 c 6 s 928 are each amended to read as follows:

(1) With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:

(a) A guardian may represent and bind the estate that the guardian controls;

(b) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(c) A trustee may represent and bind the beneficiaries of the trust; and

(d) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

~~((2))~~ (3) Any notice requirement in this title is satisfied if ~~((notice is given as follows))~~:

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person; ~~((and))~~

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living

person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event(

~~(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.~~

~~(4)); and~~

(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.

(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(5) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise ((virtually) represented under this section.

NEW SECTION. Sec. 10. A new section is added to chapter 11.96A RCW to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, with respect to any charitable disposition made in a will or trust, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) The disposition does not fail, in whole or in part;

(b) The subject property does not revert to the alternative, residuary, or intestate heirs of the estate or, in the case of a trust, the trustor or the trustor's successors in interest; and

(c) The court may modify or terminate the trust by directing that the property be applied or distributed, in whole or in part, in a manner consistent with the testator's or trustor's charitable purposes.

(2) A provision in the terms of a will or charitable trust that would result in distribution of the property to a noncharitable beneficiary prevails over the power of the court under subsection (1) of this section to modify or terminate the will provision or trust only if, when the provision takes effect:

(a) The property is to revert to the trustor and the trustor is still living; or

(b) Fewer than twenty-one years have elapsed since the following:

(i) In the case of a charitable disposition in trust, the date of the trust's creation or the date the trust became irrevocable; or

(ii) In the case of a charitable disposition in a will, the death of the testator, in the case of a charitable disposition in a will.

(3) For purposes of this title, a charitable purpose is one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community.

NEW SECTION. Sec. 11. A new section is added to chapter 11.96A RCW to read as follows:

The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings or binding nonjudicial procedure under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence, or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence, that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement.

Sec. 12. RCW 11.97.010 and 2003 c 254 s 4 are each amended to read as follows:

(1) The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240 (~~and~~), 11.95.100 through 11.95.150, and chapter 11.— RCW (the new chapter created in section 39 of this act). In no event may a trustee be relieved of the duty to act in good faith and with honest judgment or the duty to provide information to beneficiaries as required in this section. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all

common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.

(3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:

(a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(c) The trustee's compensation for the period;

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in section 32 of this act or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.

(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection.

NEW SECTION. Sec. 13. A new section is added to chapter 11.97 RCW to read as follows:

The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

Sec. 14. RCW 11.98.009 and 1985 c 30 s 40 are each amended to read as follows:

Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, (~~trusts created by the judgment or decree of a court not sitting in probate,~~) liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part.

NEW SECTION. Sec. 15. A new section is added to chapter 11.98 RCW to read as follows:

METHODS OF CREATING A TRUST. A trust may be created by:

- (1) Transfer of property to another person as trustee during the trustor's lifetime or by will or other disposition taking effect upon the trustor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee; or
- (3) Exercise of a power of appointment in favor of a trustee.

NEW SECTION. Sec. 16. A new section is added to chapter 11.98 RCW to read as follows:

REQUIREMENTS FOR CREATION. (1) A trust is created only if:

- (a) The trustor has capacity to create a trust;
 - (b) The trustor indicates an intention to create the trust;
 - (c) The trust has a definite beneficiary or is:
 - (i) A charitable trust;
 - (ii) A trust for the care of an animal, as provided in chapter 11.118 RCW; or
 - (iii) A trust for a noncharitable purpose, as provided in section 20 of this act;
 - (d) The trustee has duties to perform; and
 - (e) The same person is not the sole trustee and sole beneficiary.
- (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

NEW SECTION. Sec. 17. A new section is added to chapter 11.98 RCW to read as follows:

TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

- (1) The trustor was domiciled, had a residence, or was a national;
- (2) The trustee was domiciled or had a place of business; or
- (3) Any trust property was located.

NEW SECTION. Sec. 18. A new section is added to chapter 11.98 RCW to read as follows:

TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

NEW SECTION. Sec. 19. A new section is added to chapter 11.98 RCW to read as follows:

EVIDENCE OF ORAL TRUST. Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence.

NEW SECTION. Sec. 20. A new section is added to chapter 11.98 RCW to read as follows:

NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs.

Sec. 21. RCW 11.98.039 and 2005 c 97 s 13 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been

selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee shall serve as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with section 22 of this act and RCW 11.98.045 through 11.98.055.

NEW SECTION. Sec. 22. A new section is added to chapter 11.98 RCW to read as follows:

SITUS OF TRUST AND GOVERNING LAW. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee shall register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee shall mail a copy of the registration to each person who would be entitled to notice under RCW 11.97.010 and has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice shall have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all persons who were entitled to notice of the registration of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration shall be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the . . . day of . . . , 20. . .; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within

thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on , and no objections to such Registration have been filed with this court, the trust known as , under trust agreement dated , between as Trustor and as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of, 20

(3) If the instrument establishing a trust does not designate Washington as the situs or designate Washington law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if the conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any beneficiary entitled to notice under RCW 11.97.010 resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an intervivos trust where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased, situs has not previously been established by any court proceeding, and:

(A) The trustor's will was admitted to probate in Washington;

(B) The trustor's will was not admitted to probate in Washington, but any person entitled to notice under RCW 11.97.010 resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs shall be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220.

Sec. 23. RCW 11.98.045 and 1985 c 30 s 45 are each amended to read as follows:

(1) ~~((A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction))~~ If a trust is a Washington trust under section 22 of this act, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust; ~~((and))~~

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in section 22(1) of this act with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section ~~((;))~~ or RCW 11.98.051 ~~((;))~~ or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9).

Sec. 24. RCW 11.98.051 and 1999 c 42 s 619 are each amended to read as follows:

(1) The trustee may transfer ~~((trust assets or the place of administration))~~ trust situs (a) in accordance with RCW 11.96A.220 ~~((;—In addition, the trustee shall give)); or (b) by giving~~ written notice to those persons entitled to notice as provided for under RCW 11.96A.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW not less than sixty days before initiating the transfer. The notice ~~((shall))~~ must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the ~~((assets or administration))~~ trust will be transferred together with evidence that the trustee has agreed to accept the ~~((assets or))~~ trust ~~((administration))~~ in the manner provided by law of the new ~~((place of administration))~~ situs. The notice ~~((shall))~~ must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the ~~((right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055))~~ date, not less than sixty days after the giving of the notice, by which the beneficiary must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the ~~((trustee receives written consent to the proposed transfer from all persons entitled to notice))~~ date upon which the beneficiaries' right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust ((assets or place of administration)) situs as provided in the notice. ((Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer.)) If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

Sec. 25. RCW 11.98.055 and 1999 c 42 s 620 are each amended to read as follows:

(1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of ~~((trust assets or transfer of the place of administration))~~ the situs of a trust in accordance with RCW 11.96A.080 through 11.96A.200.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of ~~((trust assets or the place of trust administration))~~ the situs of a trust on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

Sec. 26. RCW 11.98.070 and 2010 c 8 s 2091 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust (~~(, unless the loan is as described in RCW 83.110.020(2),)~~) and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16)(a) Pay ~~((any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he or she resides, or third person))~~ an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a)(i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers,

accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; ~~((and))~~

(34)(a) Donate a qualified conservation easement, as defined by ~~((section))~~ 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under ~~((section))~~ 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under ~~((section))~~ 26 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under ~~((section))~~ 26 U.S.C. Sec. 2031(c)(8)(B) of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under ~~((section))~~ 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

NEW SECTION. Sec. 27. A new section is added to chapter 11.98 RCW to read as follows:

DISTRIBUTION UPON TERMINATION. (1) Upon termination or partial termination of a trust, the trustee may send, by personal service, certified mail with return receipt requested, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, to the beneficiaries a proposed plan to distribute existing trust assets. The right of any beneficiary to object to the plan to distribute existing trust assets, including the right to object to nonpro rata distributions authorized under RCW 11.98.070(15), terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

NEW SECTION. Sec. 28. A new section is added to chapter 11.98 RCW to read as follows:

NONLIABILITY OF THIRD PERSONS WITHOUT KNOWLEDGE OF BREACH. (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

NEW SECTION. Sec. 29. A new section is added to chapter 11.98 RCW to read as follows:

EXCULPATION OF TRUSTEE. (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor.

NEW SECTION. Sec. 30. A new section is added to chapter 11.98 RCW to read as follows:

BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

NEW SECTION. Sec. 31. A new section is added to chapter 11.98 RCW to read as follows:

CERTIFICATION OF TRUST. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments

which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

NEW SECTION. Sec. 32. A new section is added to chapter 11.98 RCW to read as follows:

DUTY OF LOYALTY. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.090, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30 of this act; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under RCW 11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests.

NEW SECTION. Sec. 33. A new section is added to chapter 11.98 RCW to read as follows:

DAMAGES FOR BREACH OF TRUST. (1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A

trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Sec. 34. RCW 11.100.090 and 1985 c 30 s 75 are each amended to read as follows:

Unless the instrument creating the trust expressly provides to the contrary and except as authorized in section 32 of this act, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12).

NEW SECTION. **Sec. 35.** CAPACITY OF TRUSTOR OF REVOCABLE TRUST. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

NEW SECTION. **Sec. 36.** REVOCATION OR AMENDMENT OF REVOCABLE TRUST. (1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee shall promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power, as

provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240.

NEW SECTION. Sec. 37. TRUSTOR'S POWERS—POWERS OF WITHDRAWAL. While a trust is revocable by the trustor, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the trustors having the right to revoke the trust.

NEW SECTION. Sec. 38. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST—DISTRIBUTION OF TRUST PROPERTY. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice with the information required in RCW 11.97.010, and notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

NEW SECTION. Sec. 39. Sections 35 through 38 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. Sec. 40. APPLICATION. Except as otherwise provided in this act:

(1) This act applies to all trusts created before, on, or after January 1, 2012;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2012;

(3) Any rule of construction or presumption provided in this act applies to trust instruments executed before January 1, 2012, unless there is a clear indication of a contrary intent in the terms of the trust;

(4) An action taken before January 1, 2012, is not affected by this act; and

(5) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2012, that statute continues to apply to the right even if it has been repealed or superseded.

NEW SECTION. **Sec. 41.** EFFECTIVE DATE. This act takes effect January 1, 2012.

Passed by the House April 13, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 328

[House Bill 1052]

CORPORATIONS—SHAREHOLDERS AND BOARDS OF DIRECTORS—AUTHORITY

AN ACT Relating to the authority of shareholders and boards of directors to take certain actions under the corporation act; amending RCW 23B.02.060, 23B.08.010, 23B.10.200, 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020; and adding new sections to chapter 23B.08 RCW.

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

Sec. 1. RCW 23B.02.060 and 2009 c 189 s 5 are each amended to read as follows:

(1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision(~~(, not in conflict with law or the articles of incorporation,))~~ for managing the business and regulating the affairs of the corporation(~~(, including but not limited to the following:~~

~~(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;~~

~~(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and~~

~~(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240)) to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320.~~

Sec. 2. RCW 23B.08.010 and 1989 c 165 s 80 are each amended to read as follows:

(1) (~~Except as provided in subsection (3) of this section,)~~ Each corporation must have a board of directors(~~:~~

~~(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.~~

~~(3)),~~ except that a corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation, or in a shareholders' agreement authorized by RCW 23B.07.320, who will perform some or all of the duties of the board of directors.

(2) Subject to any limitation set forth in this title, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320:

(a) All corporate powers shall be exercised by or under the authority of the corporation's board of directors; and

(b) The business and affairs of the corporation shall be managed under the direction of its board of directors, which shall have exclusive authority as to substantive decisions concerning management of the corporation's business.

Sec. 3. RCW 23B.10.200 and 2009 c 189 s 35 are each amended to read as follows:

(1) A corporation's board of directors, subject to the limitations set forth in RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, ~~((unless))~~ except to the extent that:

(a) This power is reserved exclusively to the shareholders pursuant to the articles of incorporation(;) or a shareholders' agreement authorized by RCW 23B.07.320, or pursuant to RCW 23B.10.205, ((or, if applicable, RCW)) 23B.10.210, or any other provision of this title ((reserve this power exclusively to the shareholders in whole or part)); or

(b) The shareholders, in amending ~~((or))~~, repealing, or adopting a particular bylaw under subsection (2) of this section, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders, subject to the limitations set forth in RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors.

NEW SECTION. Sec. 4. A new section is added to chapter 23B.08 RCW to read as follows:

A corporation may agree to submit a corporate action to a vote of its shareholders whether or not the board of directors determines at any time subsequent to approving such a corporate action that it no longer recommends the corporate action.

Sec. 5. RCW 23B.10.030 and 2003 c 35 s 4 are each amended to read as follows:

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation ((and)) or (ii) section 4 of this act applies, and in either case the board of directors communicates the basis for ((its determination)) so proceeding to the shareholders ~~((with the amendment))~~; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of

the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the amendment to be adopted must be approved by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040.

Sec. 6. RCW 23B.11.030 and 2009 c 189 s 38 are each amended to read as follows:

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders~~(s)~~ unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation ~~(and)~~ or (ii) section 4 of this act applies, and in either case the board of directors communicates the basis for ~~(its determination)~~ so proceeding to the shareholders ~~(with the plan)~~; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder approval is not required under subsection (7) of this section. The

articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of

merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Sec. 7. RCW 23B.12.020 and 2009 c 189 s 40 are each amended to read as follows:

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be approved:

(a) The board of directors must recommend the proposed transaction to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation ~~((and))~~ or (ii) section 4 of this act applies, and in either case the board of directors communicates the basis for ((its determination)) so proceeding to the shareholders ((with the submission of the proposed transaction)); and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is approved, the transaction may be abandoned, subject to any contractual rights, without further shareholder approval, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

Sec. 8. RCW 23B.14.020 and 2009 c 189 s 50 are each amended to read as follows:

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be approved:

(a) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation ~~((and))~~ or (ii) section 4 of this act applies, and in either case the board of directors communicates the basis for ~~((its determination))~~ so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050 and stating that the purpose or one of the purposes of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for approving the proposed dissolution without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposed dissolution must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed dissolution, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed dissolution. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed dissolution and of each other voting group entitled to vote separately on the proposed dissolution.

NEW SECTION. Sec. 9. A new section is added to chapter 23B.08 RCW to read as follows:

The right of a director, officer, employee, or agent to indemnification or to advancement of expenses arising under a provision in the articles of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal of that provision after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses under that provision is sought, unless the provision in effect at the time of such an act or omission explicitly authorizes the elimination or impairment of the right after such an action or omission has occurred.

Passed by the House March 1, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 329

[Substitute House Bill 1053]

GUARDIANSHIP—TASK FORCE RECOMMENDATIONS

AN ACT Relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force; amending RCW 11.88.020, 11.88.030, 11.92.043, 11.88.095, 11.88.125, 11.88.140, 11.92.053, 11.92.040, 11.92.050, and 36.18.016; and adding a new section to chapter 11.88 RCW.

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

Sec. 1. RCW 11.88.020 and 1997 c 312 s 1 are each amended to read as follows:

(1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

- (a) under eighteen years of age except as otherwise provided herein;
- (b) of unsound mind;
- (c) convicted of a felony or of a misdemeanor involving moral turpitude;
- (d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;
- (e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;
- (f) a person whom the court finds unsuitable.

(2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043 or 11.92.040. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court shall require the completion of the

required training video or web cast by a date no later than ninety days after the appointment.

Sec. 2. RCW 11.88.030 and 2009 c 521 s 36 are each amended to read as follows:

(1) Any person or entity may petition for the appointment of a qualified person, (~~trust company, national bank, or nonprofit corporation~~) certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment; and

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2) The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the petitioner requests expedited appointment due to emergent circumstances.

~~((2))~~ (3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

~~((3))~~ (4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

~~((4))~~ (5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- (1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;
- (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- (6) TO POSSESS A LICENSE TO DRIVE;
- (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

~~((5))~~ (6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 3. RCW 11.92.043 and 1991 c 289 s 11 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

- (a) The address and name of the incapacitated person and all residential changes during the period;
- (b) The services or programs which the incapacitated person receives;
- (c) The medical status of the incapacitated person;
- (d) The mental status of the incapacitated person;
- (e) Changes in the functional abilities of the incapacitated person;
- (f) Activities of the guardian for the period;
- (g) Any recommended changes in the scope of the authority of the guardian;
- (h) The identity of any professionals who have assisted the incapacitated person during the period;

(i)(i) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (A) Was appointed prior to the effective date of this section; (B) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (C) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(ii) The superior court may, upon (A) petition by the guardian or limited guardian; or (B) any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to the effective date of this section. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the

length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(j) Evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (a) Therapy or other procedure which induces convulsion;
- (b) Surgery solely for the purpose of psychosurgery;
- (c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW ((~~71.05.370~~) 71.05.217).

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW

11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

Sec. 4. RCW 11.88.095 and 1995 c 297 s 5 are each amended to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) ~~((When the next report of the guardian is due;~~

~~((~~)))~~ The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;~~

~~((~~)))~~ (d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW 11.92.050. The court may review and approve an account or report without conducting a hearing;~~

~~((~~)))~~ (e) A directive to the clerk of court to issue letters of guardianship as specified in section 6 of this act;~~

~~((~~)))~~ (f) Whether the guardian ad litem shall continue acting as guardian ad litem;~~

~~((~~)))~~ (g) Whether a review hearing shall be required upon the filing of the inventory;~~

~~((~~)))~~ (h) Whether a review hearing is required upon filing the initial personal care plan;~~

~~((~~)))~~ (i) The authority of the guardian, if any, for investment and expenditure of the ward's estate; ~~and~~~~

~~((~~)))~~ (j) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and~~

~~((~~)))~~ (k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:~~

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and Accounting:

Date of Next Review:

Letters Expire On:

Bond Amount: \$.....
Restricted Account
Agreements Required:
Due Date for Inventory:
Due Date for Care Plan:

Incapacitated Person Guardian of: Estate Person
(IP)

<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the continued validity of that medical power of attorney before appointing a guardian or limited guardian for the person.

Sec. 5. RCW 11.88.125 and 2008 c 6 s 805 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person((s)) shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian

or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)~~((g))~~ (j). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

NEW SECTION. Sec. 6. A new section is added to chapter 11.88 RCW to read as follows:

(1) A guardian or limited guardian may not act on behalf of the incapacitated person without valid letters of guardianship. Upon appointment and fulfilling all legal requirements to serve, as set forth in the court's order, the clerk shall issue letters of guardianship to a guardian or limited guardian appointed by the court. All letters of guardianship must be in the following form, or a substantially similar form:

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

IN THE MATTER OF THE Guardianship Cause No.
GUARDIANSHIP OF
.....

Incapacitated Person LETTERS OF GUARDIANSHIP OR
LIMITED GUARDIANSHIP

Date letters expire

THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE
FOLLOWING:

On the day of, 20... the Court appointed to serve as:

- Guardian of the Person Full Limited
Guardian of the Estate Full Limited

for, the incapacitated person, in the above referenced matter.

The Guardian has fulfilled all legal requirements to serve, including, but not limited to:
Taking and filing the oath; filing any bond consistent with the court's order; filing any blocked
account agreement consistent with the court's order; and appointing a resident agent for a
nonresident guardian.

The Court, having found the Guardian duly qualified, now makes it known is
authorized as the Guardian for designated in the Court's order as referenced above.

The next filing and reporting deadline in this matter is on the ... day of

THESE LETTERS ARE NO LONGER VALID ON

These letters can only be renewed by a new court order. If the court grants an extension, new
letters will be issued.

This matter is before the Honorable of Superior Court, the seal of the Court being
affixed this ... of

State of Washington)
) ss.
County of

I,, Clerk of the Superior Court of said County and State, certify that this document
represents true and correct Letters of Guardianship in the above entitled case, entered upon the
record on this day of

These Letters remain in full force and effect until the date of expiration set forth above.

The seal of Superior Court has been affixed and witnessed by my hand this day of
.....

....., Clerk of Superior Court

By....., Deputy

.....
(Signature of Deputy)

(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian.

Sec. 7. RCW 11.88.140 and 1991 c 289 s 9 are each amended to read as follows:

(1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) **TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION.** A guardianship for the benefit of a minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the

court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A
DECLARATION OF
COMPLETION OF
GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19
.
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within ~~((thirty))~~ ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 8. RCW 11.92.053 and 1995 c 297 s 7 are each amended to read as follows:

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as

upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud.

Sec. 9. RCW 11.92.040 and 1991 c 289 s 10 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ~~((thirty))~~ ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) All court orders approving accounts or reports filed by a guardian or limited guardian must contain a guardianship summary placed directly below the

case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:

Due Date for Report and Accounting:

Date of Next Review:

Letters Expire On:

Bond Amount: \$.....

Restricted Account:

Agreements Required:

Incapacitated Person (IP) Guardian of: [] Estate [] Person

<u>Name:</u>	<u>Name:</u>
<u>Address:</u>	<u>Address:</u>
<u>Phone:</u>	<u>Phone:</u>
<u>Facsimile:</u>	<u>Facsimile:</u>

<u>Standby Guardian</u>	<u>Address</u>	<u>Relation to IP</u>

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

~~((5))~~ (6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

~~((6))~~ (7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person (~~= PROVIDED, HOWEVER, That~~). However, the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof;

(8) To provide evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to the effective date of this section; (b) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (c) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian. The superior court may, upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to the effective date of this section. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is

monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days; and

(9) To provide evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

Sec. 10. RCW 11.92.050 and 1995 c 297 s 6 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the ~~((guardian or limited guardian may petition the court for))~~ court shall enter an order settling ~~((his or her))~~ the guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such ~~((petition))~~ account or report being filed, the court may, in its discretion, ~~((where the size or condition of the estate warrants it,))~~ set a date for the hearing ~~((of the petition))~~ and require the service of the ~~((petition))~~ guardian's report or account and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order for one or more of the following actions:

(a) Entering an order to show cause and requiring the guardian to appear at a show cause hearing. At the hearing the court may take action to protect the incapacitated person, including, but not limited to, removing the guardian or limited guardian pursuant to RCW 11.88.120 and appointing a successor;

(b) Directing the clerk to extend the letters, for good cause shown, for no more than ninety days, to permit the guardian to file his or her account or report;

(c) Requiring the completion of any approved guardianship training made available to the guardian by the court;

(d) Appointing a guardian ad litem subject to the requirements in RCW 11.88.090;

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

~~((2))~~ (6) The procedure established in ~~((subsection (1) of))~~ this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043.

**Sec. 11. RCW 36.18.016 and 2009 c 417 s 2 are each amended to read as follows:*

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of five dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed thirty dollars per hour.

(12) For processing ex parte orders, the clerk may collect a fee of thirty dollars.

(13) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(16) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(19) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(20) A service fee of five dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(21) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(22) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(23) Investment service charge and earnings under RCW 36.48.090 must be charged.

(24) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(25) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This

charge shall be used solely to offset the cost of the mandatory arbitration program.

(26) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(27) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(28) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(29) For the collection of unpaid legal financial obligations, the clerk may impose an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780.

(30) A surcharge of up to twenty dollars may be charged in dissolution and legal separation actions as authorized by RCW 26.12.260.

(31) For the filing of accounts required under RCW 11.92.040(2), a fee must be charged to the estate of the incapacitated person. The amount of the fee is determined by the total net fair market value of the guardianship estate identified pursuant to RCW 11.92.040(2)(e). If the total fair market value of the guardianship estate is less than or equal to one hundred thousand dollars, a filing fee is not required. If the superior court finds that payment of the filing fee would result in substantial hardship upon the incapacitated person, the superior court may waive or reduce the filing fee. The amount of the fee is as follows:

(a) Seventy-five dollars for guardianship estates with a total net fair market value greater than one hundred thousand dollars but not exceeding five hundred thousand dollars;

(b) One hundred fifty dollars for guardianship estates with a total net fair market value greater than five hundred thousand dollars but not exceeding one million dollars; or

(c) Two hundred fifty dollars for guardianship estates with a total net fair market value greater than one million dollars.

(32) The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits.

**Sec. 11 was vetoed. See message at end of chapter.*

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor May 12, 2011, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 13, 2011.

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

"I am returning, without my approval as to Section 11, Substitute House Bill 1053 entitled:

"AN ACT Relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force."

Section 11 implements a fee schedule for filing of reports under RCW 11.92.040(2). The Judicial Branch has indicated support for the underlying bill, but opposition to the fee. Therefore, I am vetoing Section 11 and expect that the Judicial Branch agencies will implement the requirements of the bill within appropriated resources.

For this reason, I have vetoed Section 11 of Substitute House Bill 1053.

With the exception of Section 11, Substitute House Bill 1053 is approved."

CHAPTER 330

[Second Substitute House Bill 1128]

FOSTER CARE—EXTENDED SERVICES

AN ACT Relating to extended foster care services; amending RCW 13.04.011 and 74.13.020; reenacting and amending RCW 13.34.030, 74.13.031, and 13.34.145; adding a new section to chapter 13.34 RCW; adding a new section to chapter 74.13 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or GED to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available.

Sec. 2. RCW 13.04.011 and 2010 c 150 s 4 are each amended to read as follows:

For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child.

Sec. 3. RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s 10, and 2010 c 94 s 6 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when 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 responsibilities despite an ability to exercise such rights and responsibilities. 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.

(2) "Child," ~~(and)~~ "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "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: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; ~~(or)~~

(c) 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; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests 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.

(10) "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.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "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, disability lifeline benefits, 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 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.

(13) "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.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that 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 the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(19) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031.

Sec. 4. RCW 74.13.020 and 2010 c 291 s 3 are each amended to read as follows:

For purposes of this chapter:

(1) "Case management" means the management of services delivered to children and families in the child welfare system, including permanency services, caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

(6) "Department" means the department of social and health services.

(7) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(8) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(9) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include

provisions that link the performance of the contractor to the level and timing of reimbursement.

(10) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(11) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(12) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section.

(13) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

Sec. 5. RCW 74.13.031 and 2009 c 520 s 51, 2009 c 491 s 7, and 2009 c 235 s 2 are each reenacted and amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) ~~((Have authority to))~~ Provide continued ~~((foster care or group care as needed))~~ extended foster care services to youth ages eighteen to twenty-one years to participate in or complete a ((high school or vocational school) secondary education program or a secondary education equivalency program.

(11) ~~((a) Within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:~~

~~(i) Enrolled and participating in a postsecondary or vocational educational program;~~

~~(ii) Participating in a program or activity designed to promote or remove barriers to employment;~~

~~(iii) Engaged in employment for eighty hours or more per month; or~~

~~(iv) Incapable of engaging on any of the activities described in (a)(i) through (iii) of this subsection due to a medical condition that is supported by regularly updated information.~~

~~(b) A youth who remains eligible for placement services or benefits pursuant to department rules may continue to receive placement services and benefits until the youth reaches his or her twenty first birthday.~~

~~(12) Within amounts appropriated for this specific purpose,)~~ Have authority to provide adoption support benefits, or ~~((subsidized))~~ relative guardianship ~~((benefits))~~ subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a ~~((subsidized))~~ relative guardianship at age sixteen or older and who ~~((are engaged in one of the activities))~~ meet the criteria described in subsection ~~((11))~~ (10) of this section.

~~((13))~~ (12) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

~~((14))~~ (13) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

~~((15))~~ (14) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

~~((16))~~ (15) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

~~((17))~~ (16) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and

administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

Sec. 6. RCW 13.34.145 and 2009 c 520 s 30, 2009 c 491 s 4, and 2009 c 477 s 4 are each reenacted and amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) 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, 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) 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 months, as provided in 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, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(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.

(2) 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.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) 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.

(b) In cases where the primary permanency planning goal has not 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. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, 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, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(ii) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department or supervising agency 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.

(d) 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:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(~~(5)~~)(6), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising 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.

(5) 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.

(6) 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.

(7) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the 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) 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 the requirements of subsection (8) of this section are met.

(10) 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 department or supervising 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) 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. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) 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.

NEW SECTION. Sec. 7. A new section is added to chapter 13.34 RCW to read as follows:

(1) In order to facilitate the delivery of extended foster care services, the court shall postpone for six months the dismissal of a dependency proceeding for any child who is a dependent child in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday, is enrolled in a secondary education program or a secondary education equivalency program. The six-month postponement under this subsection is intended to allow a reasonable window of opportunity for an eligible youth who reaches the age of eighteen to request extended foster care services from the department or supervising agency. At the end of the six-month period, the court shall dismiss the dependency if the youth has not requested extended foster care services from the department. Until the youth requests to participate in the extended foster care program, the department is relieved of supervisory responsibility for the youth.

(2) A youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian shall be dismissed from the dependency proceeding when the youth reaches the age of eighteen years.

(3) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services.

(4) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(5) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and

(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(6) Prior to the hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review.

(7) Upon the request of the youth, or when the youth is no longer eligible to receive extended foster care services according to rules adopted by the department, the court shall dismiss the dependency.

NEW SECTION. Sec. 8. A new section is added to chapter 74.13 RCW to read as follows:

(1) Within amounts appropriated for this specific purpose, the department shall have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:

(a) Enrolled in a secondary education program or a secondary education equivalency program;

(b) Enrolled and participating in a postsecondary or vocational educational program;

(c) Participating in a program or activity designed to promote or remove barriers to employment;

(d) Engaged in employment for eighty hours or more per month; or

(e) Incapable of engaging in any of the activities described in (a) through (d) of this subsection due to a medical condition that is supported by regularly updated information.

(2) A youth who remains eligible for placement services or benefits under this section pursuant to department rules may, within amounts appropriated for this specific purpose, continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday.

Passed by the House April 21, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 331

[Engrossed Substitute House Bill 1295]

RESIDENTIAL FIRE SPRINKLERS—INSTALLATION

AN ACT Relating to installation of residential fire sprinkler systems; amending RCW 18.160.050 and 82.02.100; adding a new section to chapter 70.119A 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 fire sprinkler systems in private residences may prevent catastrophic losses of life and property, but that financial, technical, and other issues often discourage property owners from installing these protective systems.

It is the intent of the legislature to eradicate barriers that prevent the voluntary installation of sprinkler systems in private residences by promoting education regarding the effectiveness of residential fire sprinklers, and by providing financial and regulatory incentives to homeowners, builders, and water purveyors for voluntarily installing the systems. It is the further intent of the legislature to fully preserve the rulings of *Fisk v. City of Kirkland*, 164 Wn.2d 891 (2008), *Stiefel v. City of Kent*, 132 Wn. App.523 (2006), and similar cases.

Sec. 2. RCW 18.160.050 and 2008 c 155 s 2 are each amended to read as follows:

(1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1st, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1st, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1st.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or

from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter and standards for fire protection and its enforcement, with respect to all hospitals as required by RCW 70.41.080(~~(-and)~~); for providing assistance in identifying fire sprinkler system components that have been subject to either a recall or voluntary replacement program by a manufacturer of fire sprinkler products, a nationally recognized testing laboratory, or the federal consumer product safety commission; and for use in developing and publishing educational materials related to the effectiveness of residential fire sprinklers. Assistance shall include, but is not limited to, aiding in the identification of recalled components, information sharing strategies aimed at ensuring the consumer is made aware of recalls and voluntary replacement programs, and providing training and assistance to local fire authorities, the fire sprinkler industry, and the public. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

Sec. 3. RCW 82.02.100 and 1992 c 219 s 2 are each amended to read as follows:

(1) A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements.

(2) A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services.

NEW SECTION. Sec. 4. A new section is added to chapter 70.119A RCW to read as follows:

(1) A person or purveyor that owns, operates, or maintains a public water system shall not be liable for damages resulting from shutting off water to a residential home with an installed fire sprinkler system if the shut off is due to: (a) Routine maintenance or construction; (b) nonpayment by the customer; or (c) a water system emergency.

(2) Any governmental or municipal corporation, including but not limited to special districts, shall be deemed to be exercising a governmental function when it acts or undertakes to supply water, within or without its corporate limits, to a residential home with an installed fire sprinkler system.

Passed by the House April 15, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 332

[Substitute House Bill 1328]

MOTORCYCLES—OPERATION—LICENSE PLATES

AN ACT Relating to the operation of motorcycles; and amending RCW 46.61.613, 46.04.437, 46.18.215, 46.18.225, 46.18.230, 46.18.235, 46.18.270, 46.18.280, and 46.18.290.

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

Sec. 1. RCW 46.61.613 and 2010 c 8 s 9073 are each amended to read as follows:

The provisions of RCW 46.37.530 and 46.61.610 through 46.61.612 (~~may be~~) are temporarily suspended (~~by the chief of the Washington state patrol, or his or her designee,~~) with respect to the operation of motorcycles (~~within their respective jurisdictions in connection with a parade or public demonstration~~) on a closed road during a parade or public demonstration that has been permitted by a local jurisdiction.

Sec. 2. RCW 46.04.437 and 2010 c 161 s 133 are each amended to read as follows:

"Purple heart license plates" means special license plates that may be assigned to a motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, to recipients of the Purple Heart medal or to another qualified person.

Sec. 3. RCW 46.18.215 and 2010 c 161 s 614 are each amended to read as follows:

The department shall create, design, and issue a special baseball stadium license plate that may be used in lieu of standard issue or personalized license plates for motor vehicles required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special license plates commemorate the construction of a baseball stadium, as defined in RCW 82.14.0485. The department shall also issue to each recipient of a special baseball stadium license plate a certificate of participation in the construction of the baseball stadium.

Sec. 4. RCW 46.18.225 and 2010 c 161 s 615 are each amended to read as follows:

A state university, regional university, or state college as defined in RCW 28B.10.016 may apply to the department, in a form approved by the department and request the department to issue a series of collegiate license plates, for display on motor vehicles required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, depicting the name and mascot or symbol of the college or university, as submitted and approved for use by the requesting institution.

Sec. 5. RCW 46.18.230 and 2010 c 161 s 618 are each amended to read as follows:

(1) A registered owner who has been awarded the Congressional Medal of Honor may apply to the department for special license plates for use on a (~~passenger~~) motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The Congressional Medal of Honor recipient must:

(a) Provide proof from the Washington state department of veterans affairs showing receipt of the medal; and

(b) Be recorded as the registered owner of the motor vehicle on which the Congressional Medal of Honor license plate or plates will be displayed.

(2) Congressional Medal of Honor license plates must be issued:

(a) Only for a personal (~~passenger~~) motor vehicle owned by persons who have received the Congressional Medal of Honor; and

(b) Without payment of vehicle license fees, license plate fees, and motor vehicle excise taxes.

(3) Congressional Medal of Honor license plates must be replaced, free of charge, if the license plates become lost, stolen, damaged, defaced, or destroyed.

(4) A Congressional Medal of Honor license plate or plates may be transferred, free of charge, from one motor vehicle to another motor vehicle owned by the Congressional Medal of Honor recipient upon application to the department, county auditor or other agent, or subagent appointed by the director.

Sec. 6. RCW 46.18.235 and 2010 c 161 s 619 are each amended to read as follows:

(1) A registered owner who is a veteran, as defined in RCW 41.04.007, may apply to the department for disabled American veteran or former prisoner of war license plates, for use on one personal use motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The veteran must be recorded as the registered owner of the motor vehicle on which the disabled American veteran or former prisoner of war license plate or plates will be displayed and:

(a) Provide certification from the veterans administration or the military service from which the veteran was discharged that the veteran has a service-connected disability rating;

(b) Have lost the use of both hands or one foot;

(c) Have been captured and incarcerated by an enemy of the United States during a period of war with the United States and have received a prisoner of war medal;

(d) Have become blind in both eyes as the result of military service; or

(e) Be rated by the veterans administration or the military service from which the veteran was discharged and be receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year.

(2) The special license plates under this section must:

(a) Display distinguishing marks, letters, or numerals indicating that the registered owner is a disabled American veteran or former prisoner of war; and

(b) Be issued for one personal use vehicle without the payment of any vehicle license fees, license plate fees, or excise taxes.

(3) A registered owner who is a veteran, as defined in RCW 41.04.007, may, in lieu of applying for the special license plates under this section, apply for regular issue or any qualifying special license plate and receive the full benefit of the vehicle license fee and excise tax exemption provided in subsection (2)(b) of this section.

(4) The department may periodically verify the one hundred percent rate as described in subsection (1)(e) of this section.

(5) A veteran who has been issued disabled American veteran or former prisoner of war license plates under this section before July 1, 1983, continues to be eligible for the vehicle license fee and excise tax exemption described in subsection (2)(b) of this section.

(6) A disabled American veteran and former prisoner of war license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the veteran upon application to the department, county auditor or other agent, or subagent appointed by the director.

(7) For the purposes of this section:

(a) "Blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW; and

(b) "Special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.18.200(3).

(8) Any unauthorized use of a special license plate under this section is a gross misdemeanor.

Sec. 7. RCW 46.18.270 and 2010 c 161 s 625 are each amended to read as follows:

(1) A registered owner who has survived the attack on Pearl Harbor on December 7, 1941, may apply to the department for special license plates for use on only one motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, and owned by the qualified applicant. The applicant must:

(a) Be a resident of this state;

(b) Have been a member of the United States armed forces on December 7, 1941;

(c) Have been on station on December 7, 1941, between the hours of 7:55 a.m. and 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(d) Have received an honorable discharge from the United States armed forces;

(e) Provide certification by a Washington state chapter of the Pearl Harbor survivors association showing that qualifications in (c) of this subsection have been met;

(f) Be recorded as the registered owner of the motor vehicle on which the Pearl Harbor survivor license plate or plates will be displayed; and

(g) Pay all fees and taxes required by law for registering the motor vehicle.

(2) Pearl Harbor survivor license plates must be issued without the payment of any license plate fee.

(3) Pearl Harbor survivor license plates must be replaced, free of charge, if the license plates have become lost, stolen, damaged, defaced, or destroyed.

(4) Pearl Harbor survivor license plates may be issued to the surviving spouse or domestic partner of a Pearl Harbor survivor who met the requirements in subsection (1) of this section. The surviving spouse or domestic partner must be a resident of this state. If the surviving spouse remarries or the surviving domestic partner marries or enters into a new domestic partnership, he or she must return the special license plates to the department within fifteen days and apply for regular license plates or another type of special license plate.

(5) A Pearl Harbor survivor license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the Pearl Harbor survivor or the surviving spouse or domestic partner as described in subsection (4) of this

section upon application to the department, county auditor or other agent, or subagent appointed by the director.

Sec. 8. RCW 46.18.280 and 2010 c 161 s 628 are each amended to read as follows:

(1) A registered owner who has been awarded a Purple Heart medal by any branch of the United States armed forces, including the merchant marines and the women's air forces service pilots may apply to the department for special license plates for use on only one motor vehicle required to display one or two license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department, and owned by the qualified applicant. The applicant must:

(a) Be a resident of this state;

(b) Have been wounded during one of this nation's wars or conflicts identified in RCW 41.04.005;

(c) Have received an honorable discharge from the United States armed forces;

(d) Provide a copy of the armed forces document showing the recipient was awarded the Purple Heart medal;

(e) Be recorded as the registered owner of the motor vehicle on which the Purple Heart survivor license plate or plates will be displayed; and

(f) Pay all fees and taxes required by law for registering the motor vehicle.

(2) Purple Heart license plates must be issued without the payment of any special license plate fee.

(3) Purple Heart license plates may be issued to the surviving spouse or domestic partner of a Purple Heart recipient who met the requirements in subsection (1) of this section. The surviving spouse or domestic partner must be a resident of this state. If the surviving spouse remarries or the surviving domestic partner marries or enters into a new domestic partnership, he or she must return the special license plates to the department within fifteen days and apply for regular license plates or another type of special license plate.

(4) A Purple Heart license plate or plates may be transferred from one motor vehicle to another motor vehicle owned by the Purple Heart recipient or the surviving spouse or domestic partner as described in subsection (3) of this section upon application to the department, county auditor or other agent, or subagent appointed by the director.

Sec. 9. RCW 46.18.290 and 2010 c 161 s 630 are each amended to read as follows:

A registered owner may apply to the department, county auditor or other agent, or subagent appointed by the director for a square dancer license plate. The registered owner shall pay the special license plate fee required under RCW 46.17.220(1)(q), in addition to any other fee or tax required by law. The square dancer license plate may be issued in lieu of standard issue or personalized license plates for motor vehicles required to display one or two license plates, but may not be issued for vehicles registered under chapter 46.87 RCW.

Passed by the House April 14, 2011.

Passed by the Senate April 9, 2011.

Approved by the Governor May 12, 2011.
Filed in Office of Secretary of State May 13, 2011.

CHAPTER 333

[Substitute House Bill 1793]

JUVENILE RECORDS—ACCESS

AN ACT Relating to restricting access to juvenile records; amending RCW 19.182.040 and 13.50.050; 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:

(1) One of the goals of the juvenile justice system is to rehabilitate juvenile offenders and promote their successful reintegration into society. Without opportunities to reintegrate, juveniles suffer increased recidivism and decreased economic function.

(2) The public has an interest in accessing information relating to juvenile records for public safety and research purposes.

(3) The public's legitimate interest in accessing personal information must be balanced with the rehabilitative goals of the juvenile justice system. All benefit when former juvenile offenders, after paying their debt to society, reintegrate and contribute to their local communities as productive citizens.

(4) It is the intent of the legislature to balance the rehabilitative and reintegration needs of an effective juvenile justice system with the public's need to access personal information for public safety and research purposes.

Sec. 2. RCW 19.182.040 and 1993 c 476 s 6 are each amended to read as follows:

(1) Except as authorized under subsection (2) of this section, no consumer reporting agency may make a consumer report containing any of the following items of information:

(a) Bankruptcies that, from date of adjudication of the most recent bankruptcy, antedate the report by more than ten years;

(b) Suits and judgments that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;

(c) Paid tax liens that, from date of payment, antedate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of an adult for a crime that, from date of disposition, release, or parole, antedate the report by more than seven years;

(f) Juvenile records, as defined in RCW 13.50.010(1)(c), when the subject of the records is twenty-one years of age or older at the time of the report; and

(g) Any other adverse item of information that antedates the report by more than seven years.

(2) Subsection (1)(a) through (e) and (g) of this section is not applicable in the case of a consumer report to be used in connection with:

(a) A credit transaction involving, or that may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;

(b) The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or

(c) The employment of an individual at an annual salary that equals, or that may reasonably be expected to equal, twenty thousand dollars or more.

NEW SECTION. Sec. 3. (1)(a) A joint legislative task force on juvenile record sealing is established, with members as provided in this subsection.

(i) The president of the senate shall appoint two members from each of the two largest caucuses of the senate;

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives;

(iii) A representative of the administrative office of the courts;

(iv) A representative of the judicial information systems data dissemination committee;

(v) A representative of the association of counties, specifically county clerks;

(vi) A representative of the Washington association of prosecuting attorneys;

(vii) A representative of the Washington state patrol;

(viii) A representative from the juvenile law section of the Washington state bar association;

(ix) A representative of the Washington defenders' association;

(x) A representative of the juvenile rehabilitation administration within the department of social and health services; and

(xi) A representative of the juvenile court administrator's association.

(b) The task force shall choose one of the legislative members from the senate and one of the legislative members from the house of representatives to cochair the task force. The legislative members shall convene the first meeting of the task force.

(2) The task force shall determine how to cost-effectively restrict public access to juvenile records when an individual has met the statutory requirements of RCW 13.50.050(12) and without requiring individuals who are the subject of the records to file a motion to seal the records in juvenile court; whether and how to restrict access to diversion records; and other juvenile criminal record access issues that may arise during the work of the task force.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature by December 15, 2011.

(5) This section expires January 1, 2012.

Sec. 4. RCW 13.50.050 and 2010 c 150 s 2 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or

witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12)(a) The court shall not grant any motion to seal records for class A offenses made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person has not been convicted of a sex offense; and

(v) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person has not been convicted of a sex offense; and

(v) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14)(a) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that

records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events upon which the pardon was received. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

(c) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

~~((c))~~ (d) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection ~~(17)(c) or (d)~~ (17)(d) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection ~~(17)(c) or (d)~~ (17)(d) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (17)(a) of this section.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) Except for subsection (17)(b) of this section, no identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a

relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

NEW SECTION. Sec. 5. RCW 13.50.050 (14)(b) and (17)(b) apply to all records of a full and unconditional pardon and should be applied retroactively as well as prospectively.

NEW SECTION. Sec. 6. 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 by the House April 22, 2011.

Passed by the Senate April 22, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 334

[House Bill 2019]

ADDITIONAL CIGARETTE TAX—DEPOSIT

AN ACT Relating to the deposit of the additional cigarette tax; amending RCW 82.24.026; and declaring an emergency.

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

Sec. 1. RCW 82.24.026 and 2010 1st sp.s. c 22 s 3 are each amended to read as follows:

~~((1))~~ In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

~~((2))~~ Beginning July 1, 2010, the revenue collected under this section must be deposited ~~((as follows:~~

~~(a) 14 percent must be deposited))~~ into the general fund.

~~((b) The remainder must be deposited into the education legacy trust account.))~~

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 by the House April 5, 2011.

Passed by the Senate April 20, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

CHAPTER 335

[Senate Bill 5044]

TAX PREFERENCE REVIEW PROCESS

AN ACT Relating to the tax preference review process; and amending RCW 43.136.011, 43.136.045 and 43.136.055.

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

Sec. 1. RCW 43.136.011 and 2006 c 197 s 1 are each amended to read as follows:

The legislature recognizes that tax preferences are enacted to meet objectives which are determined to be in the public interest. However, some tax preferences may not be efficient or equitable tools for the achievement of current public policy objectives. Given the changing nature of the economy and tax structures of other states, the legislature finds that periodic performance audits of tax preferences are needed to determine if their continued existence will serve the public interest. The legislature further finds that tax preferences that are enacted for economic development purposes must demonstrate growth in full-time family wage jobs with health and retirement benefits. Given that an opportunity cost exists with each economic choice, it is the intent of the legislature that the overall impact of economic development-focused tax preferences benefit the state's economy.

Sec. 2. RCW 43.136.045 and 2006 c 197 s 4 are each amended to read as follows:

(1) The citizen commission for performance measurement of tax preferences ~~((shall))~~ must develop a schedule to accomplish an orderly review of tax preferences at least once every ten years. ~~((The commission shall schedule tax preferences for review in))~~ In determining the schedule, the commission must consider the order the tax preferences were enacted into law, ~~((except that))~~ in addition to other factors including but not limited to grouping preferences for review by type of industry, economic sector, or policy area. The commission may elect to include, anywhere in the schedule, a tax preference that has a statutory expiration date. The commission ~~((shall))~~ must omit from the schedule tax preferences that are required by constitutional law, sales and use tax exemptions for machinery and equipment for manufacturing, research and development, or testing, the small business credit for the business and occupation tax, sales and use tax exemptions for food and prescription drugs, property tax relief for retired persons, and property tax valuations based on current use, and may omit any tax preference that the commission determines is a critical part of the structure of the tax system. As an alternative to the process under RCW 43.136.055, the commission may recommend to the joint legislative audit and review committee an expedited review process for any tax preference ~~((that has an estimated biennial fiscal impact of ten million dollars or less)).~~

(2) The commission ~~((shall))~~ must revise the schedule as needed each year, taking into account newly enacted or terminated tax preferences. The commission ~~((shall))~~ must deliver the schedule to the joint legislative audit and review committee by September 1st of each year.

(3) The commission ~~((shall))~~ must provide a process for effective citizen input during its deliberations.

Sec. 3. RCW 43.136.055 and 2006 c 197 s 5 are each amended to read as follows:

(1) The joint legislative audit and review committee ~~((shall))~~ must review tax preferences according to the schedule developed under RCW 43.136.045. The committee ~~((shall))~~ must consider, but not be limited to, the following factors in the review as relevant to each particular tax preference:

(a) The classes of individuals, types of organizations, or types of industries whose state tax liabilities are directly affected by the tax preference;

(b) Public policy objectives that might provide a justification for the tax preference, including but not limited to the legislative history, any legislative intent, or the extent to which the tax preference encourages business growth or relocation into this state, promotes growth or retention of high wage jobs, or helps stabilize communities;

(c) Evidence that the existence of the tax preference has contributed to the achievement of any of the public policy objectives;

(d) The extent to which continuation of the tax preference might contribute to any of the public policy objectives;

(e) The extent to which the tax preference may provide unintended benefits to an individual, organization, or industry other than those the legislature intended;

(f) The extent to which terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference, and the extent to which resulting higher taxes may have negative effects on employment and the economy;

(g) The feasibility of modifying the tax preference to provide for adjustment or recapture of the tax benefits of the tax preference if the objectives are not fulfilled;

(h) Fiscal impacts of the tax preference, including past impacts and expected future impacts if it is continued. For the purposes of this subsection, "fiscal impact" includes an analysis of the general effects of the tax preference on the overall state economy, including, but not limited to, the effects of the tax preference on the consumption and expenditures of persons and businesses within the state;

(i) The extent to which termination of the tax preference would affect the distribution of liability for payment of state taxes;

(j) The economic impact of the tax preference compared to the economic impact of government activities funded by the tax for which the tax preference is taken at the same level of expenditure as the tax preference. For purposes of this subsection the economic impact shall be determined using the Washington input-output model as published by the office of financial management.

(k) Consideration of similar tax preferences adopted in other states, and potential public policy benefits that might be gained by incorporating corresponding provisions in Washington.

(2) For each tax preference, the committee (~~shall~~) must provide a recommendation as to whether the tax preference should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. The committee may recommend accountability standards for the future review of a tax preference.

Passed by the Senate April 21, 2011.

Passed by the House April 12, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.

AUTHENTICATION

I, K. Kyle Thiessen, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2011 session (62nd Legislature), chapters 150 through 335, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 22nd day of July, 2011.

A handwritten signature in black ink that reads "K. Kyle Thiessen" with a long horizontal flourish extending to the right.

K. KYLE THIESSEN
Code Reviser

